ERRATUM

I owe a confession and what reparation is possible to my readers, on the ground of a serious mistranslation, courteously pointed out to me by Mr. J. G. C. Anderson of Christ Church. I cannot excuse or account for the mistake, as, though the passage is somewhat long and intricate, the particular point is fairly obvious. I feel the more bound to call attention to the matter, because it suggests delusive evidence on one doubtful point, and conceals real evidence on another.

On p. 62 read, on line 1 from 'beyond Curio' down to the end of line 16, as follows, instead of the printed text:—

'in the case of a Roman citizen on the said land or ground, or a member of the allies or of the Latin name, from whom soldiers are wont to be requisitioned in Italy according to the military roll, having, as an original possessor or a person recognized as such, given up out of his own possession any public land or ground belonging to the Roman people, to the end that on the said land or ground a town or colony might in accordance with a law or plebiscite be established, planted or placed, and in which a triumvir has so established, planted or placed such town or colony in accordance with a law or plebiscite, and in the case of a triumvir having given, rendered or assigned to any of the said persons in lieu of the said land or ground any portion of public land or ground belonging to the Roman people within Italy in the consulship of P. Mucius and L. Calpurnius, always excepting that land or ground, which by the law or plebiscite of G. Sempronius Gracchus, tribune of the plebs, was by special enactment exempted from division, then the said land,' &c.

The passage so translated does not of course show that the censors could lease land to non-citizens, but it conclusively proves that Latins and *socii* could be *possessores* of public land.

As I should be sorry to mislead any young student, who may be using my book without the original, I lose no time in calling attention to the error.

E. G. H.

1284. *To face p.* 62. *May*, 1911.

SIX ROMAN LAWS

TRANSLATED WITH

INTRODUCTION AND NOTES

BY

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PREFACE

I HAVE been induced to undertake the somewhat unattractive and to me at least the not altogether easy task of translating a few of the longer and more important laws in Bruns's collection, because my own experience has convinced me that some such help is indispensable if these sources of evidence are to be accessible to our younger students in Roman History. That they should be encouraged to make use at first hand of this kind of evidence it is quite unnecessary to insist, since it has long been the tradition of historical teaching at Oxford to base the study of every period as far as possible upon the original authorities, or at least to recognize that even the best of modern works should be tested by every possible criticism, verification, and correction from these sources. But a two years' course involving subjects so various and comprehensive as those required for Literae Humaniores implies serious time limitations both upon students and lecturers. Among the former even our best men—at least this is my experience both as tutor and examiner—very rarely make any real acquaintance with these longer inscriptions. They are deterred partly by the unfamiliar legal phraseology, partly by the numerous gaps and lacunae, and in any case by the time required for translating so much not over easy Latin. On the other hand, lecturers can only deal adequately with the evidence contained in these laws in special courses, and even so, unless the texts themselves are read, perhaps not very much is gained. My object, therefore, is to make these laws accessible to all men who are reading for Literae Humaniores. To read the original is of course better than to read a translation, and I should hope that the best men would in using this book have a copy

of Bruns open before them and refer to it on the more important passages. But even apart from this, it seems to me much better that these inscriptions should be read in a translation than not read at all.

My first intention, suggested perhaps too readily by what then seemed feasible, was to let the laws speak entirely for themselves and to attempt no notes or explanations; but I realized as my work proceeded that some comments and explanations were absolutely necessary, and that if I did not supply them either my object would be defeated or my readers would have to apply to their own tutors. I have, therefore, prefixed a general introductory explanation to each law, and have added a certain number of footnotes. It has been my aim, however, to add the latter only where some technical point required explanation or where the meaning was obscured by repeated lacunae. The latter difficulty is especially frequent in the second part of the Lex Agraria.

My translation is made, by kind permission of the publisher, J. C. B. Mohr (Paul Siebeck) of Tübingen, from the sixth edition of Bruns, 1893. The seventh edition was published in 1909, a fact of which I only became aware after the book had passed through the press.

The new edition, however, so far as I have been able to discover, introduces no change in any of the laws which I have translated. I have not attempted in my translation to distinguish between the extant text and the conjectural supplement by the use of italics or square brackets, although in a few cases I have employed the latter where I thought it important to point out the conjectural character of the reading. Nor have I thought it necessary to insert the approximate number of letters missing in the lacunae.

It is my hope and intention to continue these translations in a second volume which will contain among other things the Lex Ursonensis, the two Latin charters from Spain, and possibly the Monumentum Ancyranum.

For the thorough and careful index which will, I hope, materially increase the value of the book for purposes of reference, I am indebted to Mr. P. A. Seymour, scholar of Jesus College, to whom I take this opportunity of acknowledging my obligation.

I have to express my thanks to the Master of Balliol, under whose notice a considerable part of the translation came when it was first submitted to the Press, for several corrections and suggestions which I have gladly adopted. I owe a similar debt of gratitude to Mr. P. E. Matheson, of New College, who as a Delegate of the Press went carefully through the whole of the proofs, noting many inaccuracies, and in particular calling my attention to several passages where my translation deviated from the last edition of Bruns. Without the patient assistance all through of my friend Mr. J. C. Haire, the work could not have advanced beyond the actual translation. He has not only corrected all the proofs and taken infinite pains in finding and verifying references, but has contributed so much to the completion of my work that his name might very fairly have appeared on the title-page as joint author. My obligations to others do not end here, as the whole book was written in Braille and typed out by Mr. H. W. Prebble with amazing correctness, considering the difficulty and complexity of the work and my own often faulty writing. I have lastly every reason to thank the staff at the Clarendon Press, not only for their promptitude and wonderfully careful printing, but for verifying and in some cases correcting my references.

I should add that Messrs. Macmillan and the Editors of the *Journal of Philology* have courteously allowed me to reprint an article contributed by me to that journal which, with slight variations, forms the Introduction to the Lex Agraria.

E. G. HARDY.

OXFORD, *Feb.* 28, 1911.

CONTENTS

THE LEX ACILIA REPETUNDARUM

The time indications in this law, now preserved on bronze fragments in the Naples Museum, are the following :—

1. It is later than the Lex Calpurnia of 149 B.C. and an unknown Lex Junia, both of which are referred to as superseded (v. 74). 2. It is earlier than about 111 B.C., because the Lex Agraria of that year was engraved either at once or soon after on the reverse side of the same bronze tablet, a fact which implies that the present law had by that time become obsolete. 3. It was not earlier than 133 B.C., nor later than 118 B.C., because the Gracchan Land Commissioners are alluded to as still in office (v. 2). 4. It must have been passed between the end of 123 B.C. and the earlier half of 121 B.C., because the Lex Rubria for establishing a colony at Carthage is spoken of as still in force (v. 23), and that law must have been passed either late in 123 B.C. or early in 122 B.C., and was repealed either just before or just after the death of G. Gracchus in 121 B.C. 5. From the character of the law and its attitude to the Senate, it is impossible to doubt that it was passed while Gracchus was still tribune, and therefore in 122 B.C.

The law has reference to the quaestio perpetua de repetundis, which it puts under the presidency of a special praetor in each year, who is described, sometimes as *praetor quei eam rem quaeret*, sometimes as *judex quei eam rem quaeret*. For the technical legal character of the quaestiones perpetuae, and the way in which they based a new criminal procedure upon the old civil action, I will refer the reader to Dr. Greenidge's standard work on 'Legal procedure in Cicero's time'. It is enough to say here that the first standing quaestio of the kind had been established de repetundis in 149 B.C. by Calpurnius Piso.[1] It appears that in the court so established: (1) the judices were all taken from the Senate; (2) the proceedings took the form of

[1] Cic. de Offic. II. 21. 75.

an *actio sacramento,* claimant and defendant each depositing a sum of money, like the Attic πρυτανεῖα, that of the successful party being returned, that of the loser going into the aerarium ;[2] (3) the penalty was pecuniary restitution, the *litis aestimatio* being for the simple amount claimed. The Lex Junia of uncertain date seems to have made no change in any of these respects. The present law makes no mention of a sacramentum, makes restitution twofold (v. 59), and expressly excludes from the list of judices all senators, all past or present magistrates, the fathers, brothers, or sons of any of these, all under thirty or over sixty years of age, all not living within a mile of Rome, and all absent from Italy when the list is made up (vv. 13 and 14).

At the point where the positive qualification required is given, the inscription unfortunately twice fails us (vv. 12 and 16). That it was virtually membership in the equestrian order, is as good as certain. All our authorities, though differing in details, Appian, Plutarch, Livy, Velleius, Tacitus, represent it as a question between senators and equites, and as senators are here excluded, the judices must have been equites. But whether their privilege or duty was based upon a property qualification or the possession of the *equus publicus* or on some other criterion, we cannot be sure. At any rate, as, if I remember, Dr. Greenidge points out, the list must have varied considerably from year to year, owing to the transmarine and Italian contracts of so many of the order, while the *illustres equites,* as connected with senatorial families, and those included in the *centuriae equitum,* as probably under thirty years of age, would be necessarily excluded.

The political importance of this transference of the position of juror from the Senate to the equites, as well as its probable effect on the purity of the court and the interests of the provincials, are matters of general history, which I shall not touch upon ; but I must make some allusion to the view, represented in England by Mr. Strachan-Davidson and Mr. Warde Fowler, that this law, almost certainly passed in the tribuneship of

[2] See Wordsworth's admirable note on *sacramentum, Fragments and Specimens of Early Latin,* p. 575.

G. Gracchus, was the famous *lex judiciaria*, spoken of by our authorities.

In the first place, it seems quite clear that if there was a general *lex judiciaria*, there must have been other *quaestiones perpetuae* besides that *de repetundis*. If not, we get the following difficulties. If the supposed *lex judiciaria* was passed before the present law, transferring the court from the Senate to the equites, then surely the detailed exclusions and specific qualifications so carefully and elaborately given in verses 13 and 14 would have been entirely unnecessary. On the other hand, to place the *lex judiciaria* after this law would be to make it an inexplicable repetition of one or two clauses in this law. Even if there were other *quaestiones* and a general law before the remodelling of the *quaestio de repetundis*, the minute regulations about the jurors in this law would still be a difficulty. On the other hand, if we suppose that Gracchus had the design of creating other *quaestiones* in the future, then there might be some reason for incorporating and perhaps amplifying the clauses about jurors in a later general law, applicable to all courts, as they arose. But this solution depends upon mere conjecture.[3] As a matter of fact, Appian (cap. 24), Plutarch (G. Gracch. 6), Velleius (II. 6), and Tacitus (Ann. XII. 60) assume that there were more courts than one. Perhaps they were speaking loosely, or employing the language of post-Sullan times, when, if not before, it was a generic question as to the courts, decided by distinct *leges judiciariae*. When it first became a generic question, must remain uncertain. The Servilian law of Caepio,[4] alluded to by Tacitus in XII. 60, may have been, as he implies, a general *lex judiciaria*. At any rate, the law of Livius Drusus must have been, and presumably also the law which he found in force and failed to upset. This is indicated by the fact that

[3] Mr. Fowler, I think, suggests that Gracchus may have created courts for murder and judicial corruption. I do not think there is any evidence, at any rate for the former.

[4] It seems to me quite impossible that such a reactionary law could have been passed in 106 B. C., at the time when the popular party was in full revival. There may have been a proposal made by Caepio, but it surely cannot have passed.

before the Varian commission was established, the *equites* assumed that they would be the jurors under it, which they could hardly have done had there been no general law.

On the whole I am drawn to the view that this law is the great Gracchan measure, undertaken for him, as the Lex Rubria was, by one of his colleagues in 122 B.C. Of course, if a *quaestio perpetua de sicariis*, as opposed to a special *quaestio* for the particular case, was really established in 142 B.C., as Dr. Greenidge argued from Cic. de Fin. II. 16. 54, one great difficulty in regard to a *lex judiciaria* is removed. I do not attach much importance to the fact that while Plutarch (G. Gracch. 6) states that by the Gracchan law the first jurors were to be appointed by Gracchus himself, this law orders the praetor to make the appointment within ten days of the passing of the law (v. 12). Plutarch's statement is extremely improbable, and he is certainly inaccurate in saying that the jurors were to be taken from Senate and equites.

There remains the question as to the title of the law, which used to be called the Lex Servilia. If it is to be identified with the famous Gracchan measure, why not call it the Lex Sempronia Repetundarum? The reason is that Cicero speaks of a Lex Acilia de repetundis in a way which makes it almost impossible for us not to identify it with the present law. That this Lex Acilia was not earlier than the law before us, is proved by its not being referred to as an earlier law together with the leges Calpurnia and Junia. That it was earlier than the Lex Servilia, with which it used to be identified, is proved by Cicero (in Verr. II. 1. 9. 26), who says: 'Glaucia primus tulit ut comperendinaretur reus; antea vel judicari primo poterat, vel "amplius" pronuntiari. . . . Ego tibi illam Aciliam legem restituo, qua lege multi semel accusati, semel dicta causa, semel auditis testibus condemnati sunt.' Now the law we are dealing with was demonstrably passed in 122 B.C., and the Lex Servilia could not have been passed much later than 112 B.C., and it is, to say the least, highly improbable that this law should have been superseded in the intervening eleven years by the Lex Acilia, itself to give way almost at once to the law of Glaucia.

To this it may be added that Cicero's phrase '*amplius*' *pro-*

nuntiari compared with v. 47 of our law, makes its identification with the Lex Acilia almost certain, while Cicero's description of the latter (in Verr. I. 17. 51) tends strongly to the same conclusion: 'fac tibi paternae legis Aciliae veniat in mentem, qua lege populus Romanus de pecuniis repetundis optimis judiciis severissimisque judicibus usus est.' On the whole, therefore, we may assume with tolerable confidence that we have before us the Lex Acilia, forming part of the Gracchan legislation, but actually passed by a colleague of G. Gracchus in his second tribuneship.

As throwing light upon provincial government, no doubt, the survival of the Lex Cornelia, or better still, of the Lex Julia de repetundis, would have been more interesting and valuable. The scope of this law is confined to cases where money or money's worth has been *ablatum captum coactum conciliatum aversumve*, and the penalty is still pecuniary reimbursement, though for double the amount claimed (v. 59). But for the procedure of the court, and also for the spirit actuating its institution or reconstruction, this law, fragmentary as it is in many an important clause, is invaluable.

With regard to the former point, I propose to let the law, as translated, speak for itself. The careful reader will note, among many other details: (1) the full list of magistrates and official persons who may be sued (v. 2) after they have laid down office (v. 8); (2) the *nominis delatio* before a praetor by a certain date in the year (v. 7); (3) the original selection of the 450 jurors by the praetor peregrinus (v. 12) and their subsequent annual selection by the praetor de repetundis (v. 16); (4) the qualifications and disqualifications for service as jurors (vv. 13 and 14); (5) the granting of patroni to the claimant, and their qualifications and disqualifications (v. 9); (6) the elaborate method, after careful exclusions on both sides, of selecting the fifty jurors for a particular trial (vv. 20–6); (7) the oath of the praetor, that he has selected the best jurors (v. 18); and of the jurors at the opening of the trial (v. 36), and before retiring to deliberate (v. 44); (8) the facilities for a second summons if the praetor applied to does not accept the first (v. 4); the subsidiary trial against a juror or witness for non-attendance (vv. 42 and 43); (9) the facilities

given to the claimant for collecting evidence (vv. 30 and 31); (10) the citation of witnesses, not exceeding forty-eight, who are to be unconnected with the defendant (vv. 32, 33); (11) the provision for a second hearing on a later day, *ampliatio*, if less than two-thirds of the jurors are prepared to give a verdict (vv. 47 and 48); (12) the heavy fine on jurors refusing to give a verdict more than twice in the same trial (v. 48); (13) the elaborate arrangements as to voting box and voting tablets, and the way in which each juror is to give his vote (vv. 49–54); (14) in the case of condemnation, the assessment of damages for double the amount claimed (v. 59); the taking of securities, or failing them, the sale of the condemned party's goods (v. 57); the handing in of all sums realized to the quaestor of the aerarium (v. 58); the apportionment between the different claimants (vv. 62 and 63); all payment of claims to be made by the quaestor (v. 69); the keeping and annual examination of money not paid, by the quaestor (vv. 67 and 68); its final appropriation by the people, if not claimed within a certain time (v. 66); (15) the grant to any non-citizen who secures a conviction, of the Roman civitas, or if he prefers it, of the right of provocatio (vv. 76–9).

With regard to the spirit of the law, it seems clear that its object was to encourage prosecution, and to place every facility in the hands of the plaintiff. It seems to be assumed all through, and probably with justice, that the accused was well able to take care of himself. No *patroni* are assigned to him; if he delays to declare the names of jurors to whom objection can be taken, short work is made of the affair, and the court is constituted without him (v. 25); no provision is made for the collection of his evidence, or the compulsory attendance of his witnesses; again, none of his official friends are allowed either by veto or in any other way to stop the trial, or to call away on any pretence jurors or witnesses from the court (vv. 70 and 71).

At the same time, the law has a certain political character. It is very Gracchan, as we understand the political aims of the Gracchi. Beneficial as the law is for the provincials, it might have been more so, and probably would have been, but for political if not party considerations. I am not referring so

much to the total exclusion of senators and the senatorial class from the list of jurors. That of course by itself gave a political colouring to the law, and it is possible, as Mr. Warde Fowler suggests,[5] that Gracchus only took this extreme course after an earlier scheme (Liv. Epit. 60) for leavening the Senate with a large number of equites had failed. I am rather alluding to the surely significant fact, that the only persons liable to be accused under the law are senators, or magistrates or state officials; in other words, that no protection was afforded to provincials against the extortions or malpractices of the capitalist, contractor or tax-farming class. It was this class from which the jurors were to be drawn, but they were not themselves liable to indictment. Whether the Lex Servilia made any change in this respect is doubtful, but it made responsible an indefinite class of unofficial persons by allowing an inquiry to be instituted, *quo ea pecunia pervenerit.*

There is one other point in connexion with the equestrian juries established by this law in which G. Gracchus may possibly have allowed political interests to override judicial considerations. It is perfectly clear that from this time right down to Cicero's day, the equestrian jurors claimed exemption from prosecution under the law of judicial corruption. That there was such a law, passed by Gracchus himself, we know from Cicero (Pro Cluent. 55. 151), 'hanc ipsam legem ne quis judicio circumveniretur G. Gracchus tulit'; and from the same passage, that it was confirmed unchanged by Sulla. If we only had Appian to depend upon, we should have to suppose that the equites merely managed all along by means of force or conspiracy to evade the law which was legally binding upon them. Thus in cap. 22, speaking of the period immediately following the Gracchi, he says: *τὰς τῶν δωροδοκιῶν δίκας, συνιστάμενοι σφίσιν αὐτοῖς καὶ βιαζόμενοι, πάμπαν ἀνῄρουν.* Similarly, in speaking of the attempt of Livius Drusus to make them amenable to the *δωροδοκίας ἔγκλημα*, he says that the equites had hitherto believed that this charge *καρτερῶς ὑπὲρ αὐτῶν πρόρριζον ἐσβέσθαι* (cap. 35).

[5] Eng. Hist. Rev. 1905.

But the evidence of Cicero compels us to take another view. In Pro Cluent. 56. 154, speaking of the law, 'quae tum erat Sempronia, nunc est Cornelia,' he states that the equestrian order 'ea lege non teneri'. In the same way, his description of Livius Drusus (Pro Rab. Post. 4. 16) as *in equestrem ordinem quaestionem ferenti si quis ob rem judicatam pecuniam cepisset*, clearly implies that so far this quaestio had not affected them. How then are we to account for the fact that neither the law of Gracchus nor that of Sulla affected the equites? To a certain extent no doubt in the same way. We must assume that the law of Gracchus, 'ne quis judicio circumveniretur,' was passed earlier than the Lex Acilia, before the regulations of the Lex Calpurnia were changed, and therefore while senators were the only jurors. Similarly Sulla, at the time when he confirmed the Gracchan law, had already passed his own Lex Judiciaria, restoring the juries to the Senate, and therefore saw no reason to alter the law in this respect. But there is this important difference between Sulla and Gracchus, that while the former did not contemplate the possibility of equestrian jurors, the latter himself created them, and yet did not alter his former law. I can see only one explanation. Gaius was no visionary, as perhaps Tiberius may have been, and can have had no illusions as to the temptations to which his new jurors would be exposed, or as to the probability of their yielding to them. But he had to take the risk; he could not afford to offend his new political allies. It was the same after the Lex Aurelia of 70 B.C. No one would take the responsibility of altering the law to the disadvantage of the equites. When the change was at last made through the somewhat pig-headed conscientiousness of Cato, it contributed perhaps more than anything else to break up the *concordia ordinum* from which Cicero hoped so much. As regards procedure, there was one point in the law capable of improvement. The speeches of the *patroni* came before the evidence of the witnesses, and after that evidence, often confused and contradictory, the jurors were called upon to give their verdict, with no guide or direction except their own common sense. That, added to the political complexion of most of these cases, often led the jurors to suspend their judgement, with the

result that less than the necessary two-thirds were prepared to condemn or acquit. This necessitated an *ampliatio*, a complete new hearing on some other day. But the renewed hearing might end in the same way, and the matter might go on indefinitely.

The method to which this law has recourse of fining jurors who bring in a verdict of *non liquet* more than twice in the same judicium, could only meet the case when the hesitation of the jurors was not bona fide. At any rate, this procedure involved much unnecessary waste of time. It was to obviate this disadvantage that the Lex Servilia, as we have seen, introduced *comperendinatio*. This was the ordinary and compulsory adjournment of all cases, originally till the day-after-to-morrow. The *actio prima* of the first day followed the ordinary course, first the speeches of the *patroni*, then the examination of the witnesses. But instead of the jurors having to give their verdict on this undigested evidence, the case was adjourned for the *actio secunda*, which again opened with speeches on the part of the *patroni*. In this way the evidence given in the *actio prima* was from the two opposite points of view sifted, criticized and arranged so that the jurors were in a better position to give a verdict. In this way the *non liquet* vote became less of a difficulty. In the Lex Acilia, we find that a double voting is necessary; first between *liquet* and *non liquet*, to get the necessary two-thirds, prepared to vote, guilty or not guilty; then a second and more formal voting on the part of those jurors not excluded by a previous *non liquet* vote.

Later on, the double voting was found unnecessary, and the jurors were provided with the means of giving any of the three possible verdicts.

THE LEX ACILIA REPETUNDARUM OF 122 B.C.

1 . . . [Acilius Glabrio], tribune of the plebs, duly proposed, and the plebs duly decreed, . . . the . . . . tribe voted first, the first tribesman to vote was . . . . . .

Any person [being a Roman citizen],[1] or a citizen of the allies or the Latin name, or a subject of any foreign people, or connected with the Roman people as vassal, subject, dependant, or friend, ...

2 From any person, who has been dictator,[2] consul, praetor, magister equitum, censor, aedile, tribune of the plebs, quaestor, triumvir capitalis, triumvir for the giving or assignation of lands, military[3] tribune in any one of the four first legions, or from a son of any of the foregoing, or from . . . . any person,
3 who, or whose father is a senator, for a sum of money, the amount of which for any particular year shall exceed[4] . . . . sesterces, ... such sum having been, in the exercise of an imperium or magisterial office, carried off, taken away, exacted, embezzled,[5] or appropriated from the said

[1] The persons who may bring an action for *repetundae*. The words Roman citizen are a supplement, but it is quite clear from v. 87 that actions could be brought by Romans as well as by non-citizens.

[2] The list of persons who may be accused. The mention of the triumvirs for land assignation gives a terminus ante quem for the date, as they were abolished in 118 B.C.

[3] Since 207 B.C. the 24 *tribuni militum* of the four regular legions enrolled each year were elected by the *comitia tributa*, and are therefore classed here among the minor magistrates.

[4] Petty amounts are excluded. The amount specified in the hiatus must have been less than 4,000 sesterces, since the damages assessed against Cato under this law were 8,000 sesterces, and the assessment was *in duplum*. (Cic. in Verr. III. 80.)

[5] The term *repetundae* is still used in its narrower sense of a claim made for money wrongfully extorted. In the later laws *de repetundis*, the offences were much more varied and came to include misgovernment

person himself, or his king, or his people, or his parent, or from any person who is or shall be subject to him or his parent, as head of a family, husband or owner, or from any person, to whom he, or his parent, or his son shall stand as heir. In such case, the said person shall have the right to sue and to summon the defendant, the inquiry shall fall to a praetor, and the trial, adjudication, and assessment of damages shall by this law belong to those persons who by this law shall constitute the court; . . .

If any person shall make declaration that the praetor has not 4
in accordance with this law accepted the name of the defendant in conformity with the summons, and that a court has not in accordance with this law been granted in answer to his suit, in such case, the said person shall have the right to sue, and issue a second summons;[6] the inquiry shall fall to a praetor, and the trial, adjudication, and assessment of damages shall by this law belong to those persons who shall by this law constitute the 5
court; . . .

[7] In the case of any defendant, who, after the adjudication of his case, shall be alleged to have acted in violation of this law, or against whom a summons shall have been taken out by way of collusion, or whose name in accordance with this law shall have been cancelled from the list of defendants, if any person shall desire a second time to summon such party before a praetor, in such matter the said person shall have the right to sue, and to summon such party; the inquiry shall fall to the said praetor, and the trial, adjudication, and assessment of damages shall belong to those persons who by this law shall constitute the 6
court. If any person shall desire in accordance with this law . . . to sue or to bring a summons in the name of another person, such person shall have the right to sue and to summon

generally. As noticed in the Introduction, p. 7, it is only the official, magisterial, senatorial class which can be accused under this law.

[6] This simply means that if the praetor refuses a summons or misdirects the jurors the accuser may bring his summons again before the next year's praetor.

[7] This specifies three cases in which, after a previous acquittal, the same person can be summoned again.

the defendant, the inquiry shall fall to the said praetor, and the trial, adjudication, and assessment of damages shall by this law belong to those persons who by this law shall constitute the court.

Such person shall bring the defendant into court before the praetor, to whom in accordance with this law the quaestio shall
7 for that year belong, before the 1st of September[8] of that year, and shall take out his summons; in the case of a summons being taken out after the 1st of September, the praetor shall, if the petitioner so desire, grant recuperatores, and shall order the same . . . . to adjudicate concerning the said party or the said parties. Any person summoned in accordance with this law later than the 1st of September in any year, and condemned by the said board of recuperatores, shall pay the amount of money at which
8 the damages for such matter shall be assessed, to the person who has caused his conviction,[9] . . . . . and the said money shall belong to the person who has caused the conviction. The praetor, to whom in accordance with this law the quaestio shall belong, shall see that whatever sum . . . . . has been so adjudged, shall be paid to the private individual who brings the suit.

THE FOLLOWING PERSONS NOT TO BE TRIED AS LONG AS THEY SHALL HOLD A MAGISTRACY OR AN IMPERIUM.

A dictator, consul, praetor, magister equitum, censor, aedile, tribune of the plebs, quaestor, triumvir capitalis, triumvir for giving or assigning land, military tribune of any of the first four legions, shall not be summoned to undergo trial, as long as

[8] The 1st Sept. is fixed as the date by which the summons must be taken out in order to leave time for the case to be decided by the praetor of the year. Otherwise a more summary and less formal decision of the case might be arrived at by means of *recuperatores* appointed by the praetor. But in this case restitution would be simple and not for double the amount. September and October were the unhealthy months in Rome, and the courts as a rule did not sit during them.

[9] The case before *recuperatores* would be a private action and therefore no *patroni* were publicly assigned and the money was paid not to the quaestor but direct to the private claimant.

he shall hold his magistracy or his imperium. It is not the 9
intention of this law to prevent any one of the said persons, after
he has laid down his magistracy or his imperium, from being
summoned to undergo trial. . . .

CONCERNING THE GRANTING OF PATRONI.

If any person, bringing a suit for the recovery of money, and
summoning a defendant, whose suit is brought in accordance
with this law before the 1st of September, shall desire patroni [10]
to be granted him for such purpose, the praetor, before whom 10
the summons shall be brought, shall grant to such person patroni,
being Roman citizens of free birth, provided that he shall not
knowingly and with wrongful intent include among such patroni
any person to whom the person summoned is related as son-in-law,
father-in-law, step-son, step-father, cousin, or any nearer connexion,
or who is a member of the same club or the same collegium, or who
or whose ancestors are or have been related as client or clients or
patron or patrons to the said defendant or his ancestors, ... 11
or who has been condemned in a quaestio or public court, thereby
becoming disqualified for election to the Senate, ...
nor shall the said praetor include any person, who in accordance
with this law, shall have been assigned either as a judex or a
patronus for the matter in question.

CONCERNING THE REPUDIATION OF A PATRONUS.

In the event of a patronus assigned by this law being of
suspected character, the party to whom he has been assigned
may repudiate such person. Then shall the praetor, to whom in 12
accordance with this law the quaestio shall belong, at his option
assign to the said person another patronus from the list of those
who may by this law be assigned. . . .

[10] The *patroni* were the actual pleaders; the *advocati* were legal advisers who did not speak in court It was at this point that the *divinatio* might come in, to decide which of the possible *patroni* were to be chosen.

CONCERNING THE SELECTION FOR THE PRESENT YEAR OF 450 PERSONS.

The praetor who has jurisdiction between non-citizens shall, within ten days after the ratification of this law by the people or plebs, take steps to elect 450 persons, who, being citizens within this State, [possess a rateable property of 400,000
13 sesterces or more,][11] . . . . . provided that he elects no person who is or shall have been tribune of the plebs,[12] quaestor, triumvir capitalis, military tribune of any of the first four legions, triumvir for the giving and assigning of lands, or who is or shall have been in the Senate, or who has fought or shall have fought as a hired gladiator, ... or who has been condemned by a quaestio or public court, thereby becoming disqualified for election to the Senate, or who is less than thirty or more than sixty years of age, or who does not possess a domicile in or within one mile of the city of Rome, ... or who is father, brother, or son of any of the aforesaid magistrates, or is father, brother, or son of any person who
14 is or shall have been in the Senate,[13] or who shall be beyond the sea.

OF THOSE ELECTED, THE FATHER'S NAME, TRIBE, AND COGNOMEN TO BE INDICATED.

The official, who in accordance with this law shall conduct the quaestio for the current year, ... shall on the . . . day after his election of the said persons, cause the names of all the 450 persons, elected in accordance with this law for the said

[11] Unfortunately the money qualification here is a supplement, but it is very probable that it was in this way that the judices were restricted to the equestrian order. That senators were excluded from the list appears from the next clause. Mommsen at one time was in favour of the money qualification, but introduced into the last edition of Bruns 'who within this State possessed the *equus publicus*'. I prefer his former view.

[12] The higher magistrates are not here enumerated, because they are covered by the words *quei in senatu siet*.

[13] The specified relationships to senators would of course exclude the noblest of the equites, while the age limit would exclude most of those actually serving in the cavalry.

year, together with the father's name, cognomen, and tribe, to be written, arranged by tribes, in an album, copied in black letters on a white board, and shall keep the same exposed during his magistracy. In the case of any person desiring to copy the 15
same, the praetor shall grant permission, and shall give facilities to the applicant for making such copy. The praetor, who shall have elected the 450 persons in accordance with this law, shall cause their names to be read out in a contio, and shall take oath, that he has elected in accordance with this law such persons as after due deliberation he has considered to be the best and most capable jurors for the matter in question.

The said praetor shall also have the names of the 450 persons elected in accordance with this law permanently entered in the public registers.[14]

CONCERNING THE ANNUAL ELECTION OF 450 PERSONS.

A praetor, who after the passing of this law shall in accor- 16
dance with this law be appointed judex,[15] . . . . . shall within the ten days next following the commencement of the said magistracy, take steps to elect, as aforesaid, 450 persons, who, being citizens within this State, [possess a rateable property of 400,000 sesterces or more,] . . . . . provided that he elects no person who is or shall have been tribune of the plebs, quaestor, triumvir capitalis, military tribune of any of the first four legions, triumvir for giving or assigning lands, or who is or shall have been in the Senate, or who has fought or shall have fought as a hired gladiator, ... or who has been condemned in a quaestio or public court, thereby becoming 17
disqualified for election to the Senate, or who is less than thirty or more than sixty years of age, or who does not possess a domicile in or within one mile of the city of Rome, ... or who is the father, brother, or son of any of the aforesaid magis-

[14] That is, at the aerarium, conf. Cic. Phil. V. 5.

[15] It seems probable that the special *praetor de repetundis* dates from this law, and that, so far, the *praetor peregrinus* had conducted the *quaestio*, but that for the first year the *praetor peregrinus* had not only the selection of the jurors, but the conduct of the *quaestio*.

trates, or is the father, brother, or son of any person who is or shall have been in the Senate, or who shall be beyond the sea.

THE FATHER'S NAME, TRIBE, AND COGNOMEN OF THE PERSONS ELECTED TO BE INDICATED.

The official, who in accordance with this law shall conduct the quaestio of any year, shall on the . . . day after his election of the said persons cause the names of all the 450 persons elected for the said year, together with the father's name, tribe,
18 and cognomen, to be written in an album arranged by tribes, in black letters on a white board, and shall keep the same exposed during his magistracy. . . . In the case of any person desiring to make a copy of the same, the said praetor shall . . . . . grant permission, and shall give facilities to the applicant for making such copy. The praetor, who has elected the 450 persons in accordance with this law, shall cause the names of such persons to be read out in a contio, and shall take oath, that he has in accordance with this law elected such persons as after due deliberation he has considered to be the best and most capable jurors for the matter in question.[16] The said praetor shall also have the names of all the 450 persons elected in accordance with
19 this law permanently entered in the public registers.

CONCERNING THE SUMMONS OF THE DEFENDANT AND THE SELECTION OF JURORS.

Whoever in accordance with this law shall make a claim for money from another person, such claimant shall, after the election for that year of the 450 persons aforesaid, bring the said defendant into court, before the judex,[17] appointed for the said year in accordance with this law, and shall register the summons;[18] on oath being taken that the charge is not dishonest or fraudulent, the said praetor shall accept the summons,

[16] On the praetor's oath, see Cic. pro Cluent. 43. 121.

[17] i.e., clearly, the *praetor de repetundis*.

[18] The *nominis delatio* was *in jure* before the tribunal of the praetor, and the presence of the accused was required.

and shall cause the person from whom such claim is made, 20
. . . . . on the . . . day after the summons is brought, to make declaration to the other party out of the 450 persons, elected according to this law for that year, of all those persons, ... who are related to him, the said defendant, as son-in-law, father-in-law, step-son, step-father, cousin, or any nearer connexion, or who are in the same club or in the same collegium; and he shall cause the said person, who has made such declaration, to take oath in the presence of the other party, that he has knowingly and of wrongful intent left no person among the 450, elected for that year in accordance with this law, ... 21
save those related to him in none of the aforesaid ways; and in such manner shall the said party make declaration and take oath. When the said party shall have made such declaration, then in respect to the quaestio required by the person making the said summons, the said praetor, to whom in accordance with this law the quaestio belongs, shall in every several case cause the said claimant on the twentieth day after he has brought the summons, to select, out of the 450 elected for that year, not being deceased, 100 persons, and to make declaration, ... provided 22
that no person shall be a juror, to whom he, the said claimant, is related as son-in-law, father-in-law, step-son, step-father, cousin, or any nearer connexion, or who is in the same collegium, . . . or in the same club, or who is or shall have been tribune of the plebs, quaestor, triumvir capitalis, triumvir for the giving and assigning of lands, or military tribune in any of the first four legions, or who is or shall have been in the Senate, or who is or shall have been by the Lex Rubria[19] 23
created a triumvir for the planting of a colony, ... or who shall be more than . . . . miles distant from the city of Rome, or who shall be beyond the sea; . . . . nor shall he (the said claimant) select more than one person from any household, or any person who has been or shall be condemned for embezzlement, or by virtue of an actio sacramento under the Lex Cal-

[19] This reference to the Lex Rubria as an existing law fixes the date of the law between the end of 123 B.C. and the first half of 121 B.C. See Introduction, p. 1.

purnia or the Lex Junia,[20] or after summons in accordance with this law.

Concerning the one hundred persons elected by the claimant, in accordance with this law (the praetor) shall in like manner cause the said claimant to take oath publicly, in his court, in the presence of the other party, that knowingly and of wrongful
24 intent he has elected no person who for any of the causes specified above . . . . may not lawfully be declared among the one hundred persons in accordance with this law; or who is related to him in any of the aforesaid ways . . . . . to prevent the defendant . . . . . On the claimant having selected the one hundred persons and taken the oath, then the said praetor shall cause the defendant on the sixtieth day after his summons to select as jurors any fifty persons out of the one hundred nominated in accordance with this law by the claimant,
. . . . . .

25 In the case of the person summoned under this law failing to select fifty jurors, as this law directs, or failing to make declaration of those persons among the 450 elected for that year in accordance with this law, who are related to him by affinity or blood, or are in the same club or in the same collegium, then the claimant under this law, without hindrance from the said praetor or from the other party, shall out of the one hundred persons nominated by him in accordance with this law select and
26 nominate any fifty, ... provided that he shall not knowingly and of wrongful intent elect as juror any person whom in accordance with this law it shall be illegal so to elect or nominate. The persons so elected shall be the jurors for the matter in question, and to them shall belong adjudication and assessment of damages in the said case.

THE NAMES OF JURORS AND PATRONI TO BE PRESERVED IN THE REGISTERS.

The praetor, to whom in accordance with this law the quaestio shall belong, shall cause the fifty persons, elected and nominated

[20] On the Lex Calpurnia and the Lex Junia see Introduction, pp. 1 and 2. The process under both laws was the old *actio sacramento* of civil law, and restitution had been simple, not double.

in accordance with this law by the claimant and defendant, and also the patroni, whom in accordance with this law he has assigned to the claimant, ... to be entered in the public 27
registers. And the said praetor shall grant facilities to the claimant and the defendant, or to either of them at will, for copying such names from the public registers.

THE SAME JURORS TO SERVE ON A PARTICULAR CASE TILL ITS CONCLUSION.

For whatever case jurors appointed in accordance with this law shall be elected, they shall remain the jurors in the said case till its conclusion; . . . . . [As respecting any 28
person] who shall receive money[21] in accordance with this law, [the censor] shall not, in respect of such money received in accordance with this law, degrade such person from his tribe, or take away his public horse, nor shall such act be a cause of any injury to the said person.

THE NAMES TO BE PUBLICLY WRITTEN OUT.

The praetor who in accordance with this law 29
. . . . .

CONCERNING A JUDICIUM ON A PERSON DECEASED OR IN EXILE.

If any person summoned in accordance with this law shall have died or gone into exile previous to the adjudication of the said case, the praetor, before whom the summons shall have been brought, shall notwithstanding conduct the inquiry into the said matter by means of those persons, who in accordance with this law shall constitute the court, in like manner as though the said person were still alive or present in this 30
State . . . .

CONCERNING THE HOLDING OF AN INQUISITION FOR EVIDENCE.

The praetor, after the summons has been brought before him, shall cause the court to be constituted on the first possible

[21] The reference to the person who receives money in accordance with this law is very obscure. The person would seem to be a member of the equestrian order, but whether he is an informer on some point or not, it is impossible to decide.

day, and shall, without prejudice, assign to the claimant under this law as many days as he thinks fit for the holding of the inquisition; provided that nothing be done contrary to this law, nor, after the passing of this law, ... and he shall order evidence to be collected within Italy, in the towns, fora and conciliabula, where praefects are sent for jurisdiction, or outside Italy, in the towns, fora and conciliabula, where praefects are sent for jurisdiction.

During the days in which the praetor, conducting the quaestio in accordance with this law, shall have ordered the claimant to collect such evidence, ...

32 NOTICE TO BE GIVEN TO WITNESSES.

The praetor, acting with his court, after he has heard all that in his judgement bears upon the investigation of the matter, and has tested the case, shall order those persons, indicated by the claimant, not exceeding forty-eight, to give evidence, and when that point in the case is considered with which each several witness is concerned, he shall cause all such witnesses to appear
33 for the same and give their evidence, provided that he shall not order any person to give evidence who . . . . . or who, or whose ancestors, are or have been related as client or clients to the defendant or his ancestors, or to whom or to whose ancestors the defendant or his ancestors are or have been client or clients, nor any person, save one only, who shall be a patronus[22] of the party summoned under this law, or who is a freedman or freedwoman of the said party or of his parent.

34 CONCERNING THE IMPOSITION OF A FINE.[23]

. . . . . .

CONCERNING THE KEEPING OF WITNESSES AND REGISTERS.

As respecting the witnesses, not exceeding forty-eight persons, whom the claimant shall have summoned or brought with him with intent to give evidence in regard to those matters concerning which the trial shall be held, ... for the which he shall have collected such evidence,

[22] On the exclusion of patroni see Cic. in Verr. II. 8. 24.

[23] The clause is lost, but it must deal with fines imposed on witnesses for non-attendance and other causes.

if he shall desire to produce or bring forward registers, books, or letters public or private, . . . or shall desire inquiry to be made 35
concerning such matter before the praetor, then the said praetor shall cause no hindrance to the production of witnesses or documents, or to such inquiry being held by the claimant.

THE PRAETOR TO CONDUCT AN EXAMINATION.[24]

The praetor, who in accordance with this law shall conduct the quaestio . . . . . .
. . . . . .
. . . . . .

THE JURORS TO TAKE OATH[25] PREVIOUS TO SITTING IN COURT. 36

The praetor, who in accordance with this law shall conduct the quaestio, shall before the first examination of the case cause the jurors, selected for the said matter, to take oath before him. The said jurors, selected for the case, shall all in front of the Rostra towards the Forum, take oath, ... and 37
that to the best of his ability he will listen to the words of the witnesses in the case, and will do nothing to avoid acting as juror in the said case, save for some cause which in accordance with this law shall exempt him from such service.

The names of all persons who have in such manner taken 38
oath before him, the said praetor shall cause to be read out in a contio, and shall have copied out and publicly set up in the Forum, ... nor shall he begin the case, until all the fifty jurors, selected out of the said one hundred persons, shall have taken the oath.

A JUROR NOT TO INTERRUPT PROCEEDINGS.[26]

. . . . . .

[24] What the interrogation of the praetor refers to is not clear. It is certainly not the examination of the witnesses, but may be, as Mr. Strachan Davidson believes, some examination of the defendant *in jure*.

[25] This oath of the jurors comes before the first pleadings, after which comes the evidence of the witnesses.

[26] The clause is lost, but it probably means that no juror is to interrupt the witnesses, or to give any evidence himself if he happens to have some

39 CONCERNING THE POSTPONEMENT OF THE CASE.

If any person shall assign a cause which prevents his appearance at the said court, it shall be lawful for the praetor, who in accordance with this law shall conduct the quaestio, to take cognizance of such matter, ...

CONCERNING[27] . . . . . .

Touching the action of the praetor in accordance with this law, in the event of his postponing the case, ... 40 if such postponement shall be possible, he shall cause the person, whose name is mentioned as bearing upon the matter, to appear or to be brought before his court, in the presence of the party making the demand, ... who shall be 41 summoned in accordance with this law, the said person shall have the right to sue in such matter, ... and there shall be in accordance with this law a trial and assessment of damages concerning such matter, in like manner as though . . . . 42 If the juror entrusted with this inquiry[28] shall not have approved of the reason, . . . then the said praetor shall in the 43 presence of the jurors in a contio before the Rostra declare his decision to that effect, to wit that the said person is guilty, ... If it shall be proper for a trial to be held concerning the said matter, he shall cause such trial to be held on the third

knowledge of the matter. Of course, the witnesses could be cross-examined by the *patroni* on both sides.

[27] The heading of this clause is very uncertain. Wordsworth has 'de nomine referendo', based on the supposition that 'nomen referre' go together. Bruns has 'de judicio proferendo vel referendo'. In both cases all is supplement except the last three letters *ndo*. I suggest that 'sei referre poterit' should be 'sei proferre poterit' (all that is legible of the infinitive is the final *re*), and that *referre* after *nomen* = 'makes a difference', 'is pertinent'. There seems no intelligible meaning for either of the two phrases, 'nomen referre' or 'judicium referre'. The whole matter refers to some difficulty respecting a juror or a witness which interrupts the main trial and necessitates a subsidiary one. I have left the heading of the clause a hiatus.

[28] Apparently one of the jurors was charged by the praetor with an informal investigation of the point, to be followed if necessary by the subsidiary trial alluded to in the last note.

day. . . . . If the juror entrusted with such inquiry shall in accordance with this law not have approved the reason, the praetor, conducting the quaestio in accordance with this law . . . . . .

THE JURORS TO TAKE OATH BEFORE RETIRING TO DELIBERATE.[29] 44

The praetor, conducting the quaestio in accordance with this law, shall cause the jurors, selected for the said case, before they retire to deliberate, to take oath, each person that he . . . . and that he will not with wrongful intent allow any person to become aware of his decision or that of any other juror, ... 45

THE JURORS TO BE LIABLE TO THE MAXIMUM FINE.

If the juror entrusted with the said inquiry shall not have approved the reason, any of the jurors . . . . . 46 . . by such excuse . . . . be handed in [to the tabularium] on the first day following, . . . and the said quaestor[30] . . . . . .

. . . . . .

[29] Does *ire in consilium* mean 'to retire to deliberate' or 'to come forward to give their vote, i. e. their advice to the praetor'? I prefer the former meaning. (1) In this law there are two distinct clauses, *quomodo in consilium eant*, verse 46, and *quomodo judicetur*, verse 49. (2) When the jurors have gone *in consilium*, the first voting, among themselves and apart from the praetor, takes place on the *liquet* and *non liquet* question. It is only after this has been decided and report made to the praetor that two-thirds are prepared to give a verdict, that they come into court again and declare their votes to the praetor. (3) The vote when given was not a mere *consilium* to the praetor but a *judicium* which he was bound to accept. (4) The phrase *mittere in consilium* seems to imply that the jurors were sent out of court. Of course it is possible that when the *liquet* or *non liquet* vote became a mere formality (see Introd., p. 9), *ire in consilium* was immediately followed by *judicare*, so that the two were roughly identical. In this law, however, they are clearly distinct. In Cicero, *ire in consilium* seems always to be the immediate preliminary to voting, but never, as far as I can see, identical with it. For conflicting views, see Mommsen, Strafrecht, p. 443, and Greenidge, Civil Procedure, &c., p. 496.

[30] This is very obscure, but the word *deferatur* and the mention of a quaestor suggests that some name or some statement of the point in

HOW THE JURORS SHALL RETIRE TO DELIBERATE.

The praetor, conducting the trial in accordance with this law
47 . . . . if the juror chosen for the said purpose[31] shall declare that the matter being dealt with appears 'not proven' to more than a third part of the jurors present, when the said matter is dealt with, the praetor, conducting the quaestio in accordance with this law, shall pronounce the word 'amplius',[32] and shall appoint another day for dealing with the said matter . . . . . and on that day shall order all the jurors then present to give a verdict . . . . . If it shall be notified to the praetor that
48 more than a third part of the jurors refuse to give a verdict, then shall the said praetor, for every such refusal to give a verdict exceeding two in the same trial, impose a fine of ten thousand sesterces on every juror so refusing. Then he shall publicly record the nature of the offence and the amount of fine imposed.

49 CONCERNING THE MANNER OF GIVING A VERDICT ON THE ACCUSED.

As soon as two-thirds of the jurors present shall have declared that their minds are made up on the case, ... the praetor, conducting the quaestio, shall cause those jurors who shall have refused to give a verdict to be removed, ... shall carry out the proceedings.

question, had to be recorded in the tabularium. The clause should apparently have come before that concerned with *ire in consilium*.

[31] When the jurors have gone *in consilium*, one of their number chosen for the purpose reports to the praetor whether two-thirds of the jurors present are prepared to give a verdict. If it is reported that more than one-third have not made up their minds the praetor pronounces the word 'amplius', which means that an *ampliatio* is to take place, and the case is to be heard over again on another day. The same thing may happen at the second hearing, in which case there is a second *ampliatio*. This might go on ad infinitum, but after the second *ampliatio* the jurors still refusing a verdict were liable for each refusal 'bis amplius' to a fine of 10,000 sesterces. For the substitution of *comperendinatio* by the Lex Servilia see Introduction, p. 9.

[32] I have followed the earlier reading of Bruns and of Wordsworth, *pronuntiato 'amplius'*, because it seems to me from the passage in Cicero quoted in the Introduction, that the phrase 'amplius pronuntiari' must have occurred in the law.

Then the praetor, when he has seen by means of his attendants 50
and apparitors that no juror shall leave the court, ...
. . . . . and shall cause a box . . . . digits broad and twenty
digits high to be placed down, into which the jurors may cast
their voting tablets, ...
. . . . . the praetor shall place in the hands of each 51
several juror a single voting tablet of box wood, waxed on both
sides, four digits long and . . . digits wide, with the letter 'A'
written on the one side, and the letter 'C' on the other, and 52
shall order the said juror to obliterate the one or the other . . .
. . . . . The juror shall in
such manner obliterate the same and shall bring forward the
said tablet, clearly visible in accordance with this law, and with
arm open to view, and with the letter covered by his fingers
shall publicly place the same in the said box, and shall display
the said tablet towards the public, ... and in like manner
towards the other jurors severally, and shall in such manner
cast the same into the said box. 53

CONCERNING THE MANNER OF DECLARING THE VOTES.

The juror, appointed by lot to come forward to the box to
declare the votes, shall put his hand into the said box, displaying
the same to the public, as it approaches the box, ... 54
and the verdict on the said defendant found on the said tablet,
he shall . . . . . publicly declare, pronouncing, when the
letter 'A' shall be written, 'I acquit', when the letter 'C' shall
be written, 'I condemn', when nothing shall be written, 'no vote'.
Every tablet from which such pronouncement shall be made,
he shall pass on into the hand of the next juror.

CONCERNING THE COUNTING OF THE VOTES. 55

. . . . . .
. . . . . .

CONCERNING THE ACQUITTAL OF THE DEFENDANT.

Unless the majority of the said votes shall be for condemna-
tion, the praetor, conducting the quaestio in accordance with
this law, shall pronounce that the said defendant is 'not guilty'.
The defendant, in respect of whom the praetor shall have so

pronounced, shall then, save as regards any later act, or any act of collusion or conspiracy, be acquitted of the charge in accordance with this law.

CONCERNING THE CONDEMNATION OF THE DEFENDANT.

If the majority of the said votes shall be for condemnation,
56 the praetor, conducting the quaestio in accordance with this law, shall pronounce that the said defendant is 'guilty'.

THE SAME CASE NOT TO BE TWICE PROCEEDED WITH.

As respecting any defendant, condemned or acquitted in accordance with this law, no further proceedings shall be taken against such person, save in respect to any later act, or any act of collusion or conspiracy, or in respect of assessment of damages, or under the concluding clauses (sanctio) of this law.

57 CONCERNING THE GIVING OF SECURITIES OR THE TAKING POSSESSION OF PROPERTY.

The judex conducting the said inquiry shall in respect to such matters cause the person condemned in accordance with this law to furnish securities to the quaestor,[33] according to the vote of the majority of the panel and the amount fixed by them; in the case of securities not being so furnished, he shall cause the goods of the said person to be publicly taken possession of, collected, and sold. Whatever sum shall be realized by the sale of such goods, the judex entrusted with the inquiry shall exact
58 the same from the purchaser, ... and shall transfer the said sum to the quaestor, together with a written statement of its amount. The quaestor shall receive the said money, and preserve the statement in the public accounts.

CONCERNING THE ASSESSMENT OF DAMAGES.

When any person has been condemned in accordance with this law, in respect to the amount claimed by each party, whose right to claim is allowed by this law, the praetor conducting the quaestio shall order the jurors, who shall have given verdict on the said case, to make assessment . . . . . .

[33] Cf. Cicero, pro Rab. Post. 4. 7.

in respect of every matter proved by the said panel to have 59
been taken, exacted, carried off, appropriated, or embezzled, before the passing of this law, such assessment to be simple; in respect to every matter proved by the said panel to have been taken, exacted, carried off, appropriated, or embezzled later than the passing of this law, such assessment to be for double the amount; and he shall cause the amount of the same, and the names of the several persons for whom such damages are assessed, to be handed in to the quaestor.

CONCERNING THE PAYMENT OF THE MONEY FROM THE AERARIUM.

When any person shall have satisfied the judex, who shall have
conducted the said quaestio, or his panel of jurors or the majority 60
of such panel, that the damages are to be assessed in his own name, or the name of his parent, or of a person being heir to himself or his parent, or of a person to whom he or his parent are heirs; or when any person shall have satisfied the said judex, or his panel, or the majority of such panel, that the damages are to be assessed for him in the name of his king, or his people, or of some fellow citizen, then the said judex shall cause such 61
sum of money, ... If securities shall have been given for such matter, or if a sum of money shall have been paid into the aerarium, equivalent to the amount of the assessment, in behalf of the said matter, for which under the said name assessment shall have been made, then shall the money be paid in accordance with this law within the three days next following, after such satisfaction shall have been given; nor shall any judex or any quaestor do anything, knowingly and with wrongful intent, to prevent such satisfaction being given or such payment being made.

CONCERNING THE ORDER FOR AN APPORTIONMENT.[34] 62

If the judex, conducting the quaestio, shall not be able to pay in to the quaestor in accordance with this law the whole sum of money at which he shall have assessed the damages, then within

[34] A *tributus*, apportionment, takes place when money, either to be received or paid, has to be paid to or received from the parties in accordance with some apportionment.

the twenty days next following such payment as shall have been
63 possible, the judex, conducting the said quaestio, or a judex specially appointed by this law, shall order an apportionment, ... and shall fix a day on which the person for whom, or for whose father, damages shall have been so assessed, or the legates of a king or people, in whose name damages shall have been so assessed, shall appear, provided that the time allowed do not exceed one hundred days.

CONCERNING THE OBSERVANCE OF THE APPORTIONMENT.

When the day shall have come on which the parties shall be ordered to appear, the judex, conducting the said inquiry, shall assign in due proportion to the damages assessed in every several case all the money which has been realized from the goods of the
64 condemned person, ... And when any person shall have satisfied the said judex and his panel of jurors, or the majority of such panel, that the said assessment has been made in his favour, the said judex shall on the earliest day order the quaestor to make payment, and the quaestor shall without prejudice pay the said money to the said parties.

THE RESIDUE TO REMAIN IN THE AERARIUM.

Where apportionment shall have been made to a party or parties not appearing, the quaestor shall keep the money in the aerarium, ...

65 CONCERNING A PUBLIC COPY OF THE APPORTIONMENT.

The praetor, who in accordance with this law shall have given public notice of such apportionment, shall, to the best of his ability, cause all the said details in accordance with such notice to be publicly copied out and set up in the Forum, where they may be plainly read from level ground, during the greater part of every day, up to the day when payment shall have been
66 made. . . . . the praetor, who shall have made the said apportionment, shall, during the . . . days next following after such apportionment shall have been made, have the same publicly copied out in the Forum, where it may be plainly read from level ground.

THE MONEY TO BELONG TO THE PEOPLE AFTER FIVE YEARS.

All money placed in the aerarium in accordance with this law, which the quaestor shall not have paid within the five years next following the making of the said apportionment, shall belong to the people.

CONCERNING THE EXACTION OF MONEY FROM THE SECURITIES.

The quaestor, having the aerarium as his province, to whom securities shall have been given, or quaestors, having the same 67
province in future, shall see to the best of their ability that all money which the said defendant shall not have paid, shall be exacted on the earliest day from his securities.

THE MONEY TO BE SEALED IN THE SAFES.

Whatever money shall in accordance with this law be paid in to the quaestor, he shall cause the same to be kept in safes, and the safes to be sealed with his own seal, ... and a written statement to be attached to the safes so sealed, 68
containing the name of the praetor who assessed the damages, and of the person from whom the said money was paid in, and the amount in the safe. The quaestor for the time being, to the best of his ability, within the five days next following the allotment to him of the aerarium, shall cause the said safes to be unsealed, and then, if the sum of money stated to be in the said safe shall be there found, to be sealed up afresh.

PAYMENT TO BE MADE BY THE QUAESTOR. 69

When the praetor, conducting the quaestio in accordance with this law, shall have ordered money to be given or paid to any person in accordance with this law, always assuming no act of peculatus to be intended,[35] the quaestor, who shall have the aerarium for his province, shall without prejudice to himself and out of the ordinary course give and pay the said money.

[35] The charge of *peculatus* might be involved in mishandling private money deposited as this was with a public official.

THE QUAESTOR TO CAUSE NO HINDRANCE.

The quaestor . . . . . .
. . . . . .

NO PERSON TO HINDER A TRIAL.

70 As respecting a trial, lawfully to be held in accordance with this law, at the time when such trial is so to be held, no magistrate or pro-magistrate, and no person by virtue of an imperium or potestas,[36] shall do anything to prevent a trial from being held, or a verdict from being given; nor shall any person call away from the court, or order to be called away from the court, the person in accordance with this law conducting the trial, or
71 any person acting as juror, or the legal claimant, or the defendant; . . . . nor shall he remove the said persons, or order the said persons to be removed; nor shall he do anything to prevent any of the said persons appearing at such trial, or whereby any such person shall be hindered from hearing the proceedings in the said court, or considering or giving a verdict; nor shall he order the court to be dismissed, save when the Senate[37] shall be lawfully
72 called, ... or save when the centuries or tribes shall be called within the city, for purposes other than a proposal 'per saturam'.[38]

[36] It was always the case that the tribunician *intercessio* could not interfere with the holding or the proceedings of a *quaestio perpetua*.

[37] When the Senate was called, the judicia separated, see Cic. ad Fam. VIII. 8. 8. And for the *comitia centuriata*, see Livy X. 13.

[38] It appears from this that proposals 'per saturam' were at this period not considered legal, and therefore the Lex Caecilia Didia introduced no fresh principle in this respect.

The passages in the law from the second half of verse 72 to the end of verse 79 are exactly repeated in verses 80 to 85. Whatever the cause of this duplication may be, it is clearly not necessary to translate them a second time. That there is no point in the repetition is perfectly clear, and in all probability it is to be attributed merely to the carelessness of the engraver. This note is merely to explain why the marginal numbers jump from 79 to 86.

ON THE DECEASE OF THE ORIGINAL JUDEX, HIS SUCCESSOR TO ACT; IN LIKE MANNER THE QUAESTOR.

If the praetor, conducting the quaestio in accordance with this law, or the quaestor to whom shall have been allotted the aerarium or the urban province, shall lay down or abdicate such magistracy or judicial post, or shall decease, before all the said matters shall have been adjudged, paid, or accomplished, which the said praetor or the said quaestor ought in accordance with this law to see adjudged or pay or accomplish, then any succeeding praetor, who shall conduct the quaestio in accordance 73
with this law, or any quaestor, who shall obtain the aerarium or the urban province . . . shall to the best of their ability accomplish all matters not already accomplished in accordance with this law, and shall see that all things be accomplished as required by this law, as if the said matter had been proceeded with before such person; and in regard to such matter, the law shall hold good to the said praetor and the said quaestor, in respect of all things not accomplished in accordance with this law, in such manner exactly as though the said matter had been proceeded with from the first before them.

CONCERNING MATTERS ADJUDGED BY THE LEX CALPURNIA OR THE LEX JUNIA.

As respecting persons who have been or shall have been tried 74
in accordance with the law passed by L. Calpurnius, son of Lucius, tribune of the plebs, or the law passed by M. Junius,[39] son of Decimus, tribune of the plebs, and as respecting any person, who is or shall have been acquitted or condemned by such court in accordance with either of the said laws, it is not the intention of this law that such person shall be summoned for the said matter by this law, or that legal proceedings shall be taken against such person on the said matter by this law. And if it shall be declared that any person has acted against this law, 75

[39] All acts committed before the Lex Junia would be tried under the Lex Calpurnia, and all acts committed before the present law would be tried by the Lex Junia. We know from verse 59 that the double assessment of damages was first introduced by the present law.

there shall be no legal proceeding against such person, unless the law shall have been passed before the said act was committed.

CONCERNING CASES OF COLLUSION.

If the praetor, conducting the quaestio in accordance with this law, and the jurors who were present for adjudging the case, not being deceased, or the majority of such jurors, shall be satisfied that the person who shall have brought a summons in accordance with this law, did bring the said summons by way of collusion,[40]

. . . . . .

76 CONCERNING THE GRANT OF THE CITIZENSHIP.

If any person, not being a Roman citizen,[41] shall summon another person in accordance with this law, before the praetor, to whom such quaestio shall belong, and the said person shall be condemned in such trial by this law, then the person who brought the summons, and by whose means it shall appear that the said person was chiefly condemned, shall, if he so will, both
77 himself and the sons born to him . . . . . be made Roman citizens by this law, and the grandsons, afterwards born to such son, shall be full Roman citizens, and in whatever tribe the person summoned by him in accordance with this law shall have voted, the said persons shall vote in such tribe,[42] and be regis-
78 tered by the censor therein. And the said persons shall have exemption from military service, and all money and pay earned by them shall be confirmed. It is not the intention of this law to prevent any magistrate or pro-magistrate . . . . . .

. . . . . .

. . . . . .

[40] For an instance of the question of *praevaricatio* occurring after a trial *de repetundis* see Cicero, ad Fam. 8. 8. 2.

[41] The *civitas* is offered here to any *peregrini* who secure a conviction under the law. The Lex Servilia limits this reward to Latins. This is an instance of the increasing difficulties put in the way at this period of the acquisition of the *civitas*.

[42] On the accuser taking the tribe of the condemned, see Cic. pro Balbo, 25. 78.

CONCERNING THE GRANT OF PROVOCATIO AND IMMUNITY FROM SERVICE.

If any person belonging to the Latin name,[43] . . . . . not having been dictator, praetor, or aedile in his own State,[44] shall have summoned another person before the praetor to whom such quaestio belongs, and if such person shall be condemned by this law in the said trial, then the person who brought the summons and by whose means it shall have been made clear that the defendant was mainly condemned, if he shall not desire to become a Roman citizen in accordance with this law, ... it shall be lawful to such person to enjoy provocatio to the Roman people, in like manner as though he were a Roman citizen.

In like manner, the said person himself, and his sons, and 79
grandsons, born from a son, shall have exemption and immunity from military service and public duty in his or their several States.

. 86
. . . . . shall have the option in regard to such matter,[45] whether he shall desire within his own State . . . . . .
. . . . . .
. . . . . .
. . . . . .

[43] This clause refers only to Latins. In many cases, these might prefer their own *civitas*. But to be protected in military service *a virgis et securibus*, as Roman citizens were by the Leges Porciae, was a boon which no Latin would refuse. According to Valerius Maximus XI. 5. 3 Fulvius Flaccus allowed the same alternative in his enfranchisement proposal of 125 B. C. Cf. also the proposal of Livius Drusus made in the same year as this law (Plut. G. Gracc. 8) that all the Italians should be exempted from scourging; an exemption going much further of course than the exceptional cases provided for in this law.

[44] The reason for excluding the local dictators, praetors, or aediles is that by virtue of those magistracies these persons already had a claim to the Roman *civitas*. These local titles were for the most part abolished by the Lex Julia Municipalis.

[45] It is possible that option was allowed to serve in a legion or still to remain among the *socii*. There was also possibly an option with regard to the *tributum*, whether to pay it as a Roman citizen or as a member of a Latin State.

87 If any Roman citizen shall have summoned any person in accordance with this law, ...

. . . . . .

88 Whatever person in accordance with this law shall have or shall have claim to the right of provocatio . . . . . .

. . . .

89 . . . . . the praetor who has jurisdiction between non-citizens . . . . . .

. . . . . .

90 . . . . . .

. . . . . .

THE LEX AGRARIA

This law is written on the reverse side of the same tablet on which the Lex Acilia is engraved. This fact points to extreme economy on the part of the quaestor of the aerarium, for the inference is unmistakable, that the latter law had become obsolete and that the tablet instead of being wasted was put to this new use. There is good reason for supposing that the Lex Acilia was superseded about 111 B.C. by the Lex Servilia of Servilius Glaucia, and internal evidence makes it practically certain that the present Lex Agraria was passed in that year. In the first place, the censors of 115 B.C. are more than once mentioned (verse 21, &c.) in a way suggesting that theirs was the last censorship before the passing of the law, and therefore that it is to be dated before 109 B.C. In the second place, the consuls of 113, 112, and 111 B.C. are mentioned, while it is implied in v. 95 that the vintage in the year of the last-named consuls was not yet gathered. There seems every reason therefore to identify this law with the third of the three laws referred to by Appian in I. 27. As Appian represents these three laws as successive steps in the cancelling of the agrarian legislation of the Gracchi, and as modern historians usually describe them as reactionary laws, it will be as well briefly to recall the main points about that legislation.

The three important categories of *ager publicus* existing when Tib. Gracchus became tribune were :—

1. Land let on definite leases by the censors to tenants paying an annual rent to the State, while we may perhaps include roughly under the same head the land held *in trientabulis* (v. 22) by State creditors. All this land was left untouched by the Gracchan legislation, except so far as the projected colony at Capua would have affected portions of the *ager Campanus*.

2. The land occupied on the tenure called *possessio* by indi-

vidual *possessores*. These possessors were not legally the owners of the land, the *dominium* still belonging to the State; but for generations their occupancy had been uninterfered with, and though theoretically, according to Appian (I. 7), they were subject to a rent of 10 per cent. on crops and 20 per cent. on fruits, this seems to have been very irregularly exacted, and the land had come to be regarded and in many cases treated as private property.

3. A portion of the *ager publicus*, probably a very considerable portion, had been granted on the same tenure of *possessio*, i.e. on terms of usufruct, to corporate colonies or municipia, consisting either of Roman citizens or Latins. We can hardly doubt that the rent of this land was exacted by the State from the municipalities, its distribution among individual possessors being the affair of the corporations. The *dominium*, however, belonged to the State, and the land might, like the former category, be resumed. There seems no doubt that these *coloniae et municipia* are intended by Appian's phrase ἐν ἀποίκοις πόλεσι καὶ ἰσοπολίτισιν (cf. App. I. 10 with the Lex Agr. v. 31). I have ventured on this and one or two other points to differ from Mr. Strachan-Davidson, whom I gladly recognize as our best English authority on the whole subject. He supposes that the πόλεις ἰσοπολίτιδες are not *municipia*, but *civitates foederatae*, because Appian implies that their inhabitants or the inhabitants of some of them were not Roman citizens. But surely the words of the Lex Agraria, *civium Romanorum nominisve Latini*, quoted by Mr. Strachan-Davidson himself, prove that the term *municipia* was not restricted to *municipia civium Romanorum*. Or perhaps it would be better to say that Appian's phrase corresponds to the colonies and *municipia*, and includes implicitly the *pro coloniis* and *pro municipiis* of the lex. It is possible, though I hardly think probable, that the words of Appian, ἢ ἄλλως ἐκοινώνει, may cover, as Mr. Strachan-Davidson suggests, a fourth category, land belonging to Italian communities, confiscated by the State, but like that of Volaterrae after Sulla, left to those communities on sufferance.

Now putting on one side, as too uncertain and shadowy, this possible fourth category, it was the two previous classes of public

land which were directly or prospectively affected by the Lex Sempronia of 133 B.C.

It is not my object to discuss or criticize the aims of Tib. Gracchus. I am concerned with his law only as the first step towards the settlement arrived at by the law of 111 B.C. Tiberius saw, of course, the growing depopulation of rustic Italy, the decay of the small farmer class, and the increasingly pauper proletariate of Rome. He saw too that the usufruct of the public land was almost exclusively in the hands not of the poor but of the rich; and that the *latifundia* or πεδία μακρά which were both cause and effect of the increasing slave population, in most cases included large portions of public land, the restrictions and limitations of the Licinian law of 367 B.C. being disregarded. Appian states that his object was οὐκ εἰς εὐπορίαν ἀλλ' εἰς εὐανδρίαν, but this is of course a false antithesis. The repopulation of Italy and its economic improvement were bound to go hand in hand. Augustus realized this when he declared that the Italian colonies revived or founded by him were in his lifetime *florentissimae et celeberrimae.* At any rate, the law of Tiberius revived the Licinian law, restricting the amount of land occupied by individual possessors to 500 jugera, though allowing two sons to occupy 250 jugera apiece. All public land in excess of these limits was to be resumed by the State. It seems clear to me from the words of Appian, and the point is very pertinent in deciding on the character of the law before us, that the first intention of Tiberius was, with a view of compensation to the possessors, that these 500 jugera should become their private property. I do not see how the expression in cap. 11, τὴν ἐξαίρετον ἄνευ τιμῆς κτῆσιν ἐς ἀεὶ βέβαιον ἑκάστῳ πεντακοσίων πλέθρων, is capable of any other interpretation. A *possessio* ἐς ἀεί surely involves as much contradiction as *dictator perpetuus.* But from Plutarch's account (cap. 10) it seems that this intention was not finally embodied in the law, and that owing to the obstinate resistance of the possessors, they were simply allowed to retain their precarious *possessio* of the 500 jugera. Whether for this amount any rent, or, if so, whether a quit rent or a rent pro rata, had to be paid to the State is uncertain. In any case, the arrangement was hardly an instance of dianemetic justice,

since with or without the compensation in the form suggested, the large holders suffered far more than the smaller. The land in excess of these limits, resumed by the State, was to be distributed in small allotments not exceeding thirty jugera to the poor. It is a matter of uncertainty and some difference of opinion whether these allotments were to be only for Roman citizens, or also for Latins and possibly other Italians. No doubt citizens would come first, and probably the distribution never reached the Italians, but according to Appian the policy of Tiberius was an Italian policy (I. 9, &c.), and personally I have little doubt that ultimately Italians would have benefited by the scheme, especially when the resumption came to affect the lands held corporately by Italian communities.[1]

Three points are known about these small allotments. In the first place, they were to be inalienable (App. I. 10). However necessary this restriction may have seemed at the moment, it was, as we shall see, an extremely questionable provision, and not unlikely to wreck the whole scheme.

In the second place, the allottees were, according to Plutarch (G. Gracc. XI), to pay a quit rent to the State. This was of course equitable enough, always supposing that the possessors had also to pay rent for the land left in their hands. It, however, somewhat complicated land titles, and either created or perpetuated that anomalous category of land called *ager privatus vectigalisque*.

In the third place, the work of distribution, and of course also of resumption, was to be performed by *tresviri agris dandis adsignandis*, elected, perhaps annually, by the people, but re-eligible each year. It had been the want of such a commission which had made the Licinian law inoperative. Owing to the reasons carefully given by Appian, the work of resumption threatened to be difficult and contentious, and accordingly, probably by a second law (Liv. Epit. 60), the *tresviri* were invested with extraordinary judicial competence. It does not seem to me at all certain that the ordinary judicial authorities

[1] I may notice here that I do not agree with Mr. Strachan-Davidson in taking Appian's term Ἰταλιῶται to denote in any passage others than Italians, as opposed to Roman citizens.

were wholly superseded. If they were, it seems hard to explain the statement of Popilius Laenas on his tomb, almost certainly referring to his consulship in 132 B.C., *primus fecei ut de agro poplico aratoribus cederent pastores.*

How fast the work of adjudication and distribution went on we do not know, but it was not interrupted by the death of Tib. Gracchus. It seems probable, however, that in spite of difficulties so much progress was made with the first category of land that by 129 B.C. the Italian communities found their tenure of public land threatened, if not actually interfered with. It is at this time that we have the appeal made by the Italians to Scipio Aemilianus (App. I. 19), and the transference of judicial powers from the *tresviri* to the consuls. The statement of Appian that this transference was by decree of the Senate is a difficulty, since, if judicial powers were conferred on the triumvirs by a law, they could only be taken away by a second law. I am inclined to suggest that the judicial power transferred by the Senate to the consuls only had relation to the Italian communities, and that the inactivity, to which Appian says the triumvirs were reduced, is to be narrowed to these relations. Questions affecting the Latin communities had a quasi-international character, which the Senate might perhaps claim as its province.

The particular consul in Italy at the time shirked his new duty, but it is not necessary to assume that the consuls of the following years did the same, or that the triumvirs had discontinued their work of assignation in undisputed cases. With regard to the Italians, it is clear from Appian's account of how and why the enfranchisement proposal of Fulvius Flaccus in 125 B.C. was brought on, that the danger threatening them had not diminished, but increased. Appian I. 21 says that the Italians περὶ τῆς γῆς μάλιστα ἀντέλεγον. I think the phrase may be explained in two ways. In the first place, what I should call the quasi-international complications would be almost more in evidence even than the opposition of the individual possessors.

In the second place, I imagine that the individual Latins, as deriving their occupation not directly from the Roman government, but from their own communities, would have been unable

to profit by the 500 jugera maximum, and would be wholly dispossessed in consequence of the resumption.

It seems to me that Mr. Ferrero's explanation of the Italian opposition, 'the simplicity of which helps to confirm it,' is based upon a misinterpretation of Appian I. 18. Appian says that as the land to be resumed in some cases adjoined other land, either sold to private owners or apportioned to the allies—that is, I imagine, allowed on usufruct to Italian communities—it was found necessary, with a view to accurate measurement of the public land, to institute inquiries about this other land and to demand the production of title-deeds and other documents. This surely implies that on the production of such documents the land would be left alone. But Mr. Ferrero strangely conjectures from the passage that 'the Latins and Italians were to be deprived of all public land that had not been formally assigned to them, whether they held it by purchase or merely by occupation'. Such a conjecture seems wholly out of relation to what Appian really says.

Mr. Ferrero goes on to find in the following sentences of Appian a proof that the dispossessed Italians were compensated by being included, together with the poor citizens of Rome, in the new distribution of estates (Vol. I, pp. 51, 52). It is possible, as I have already suggested, that the Italians were ultimately to have been among the small holders, but this passage does not prove it. Appian is, in fact, not talking about the Italians at all in the rest of the chapter; he is merely describing the difficulties of the commission, their reckless mode of procedure, the compulsory exchange of land sometimes effected, and the natural complaints, well or ill founded, that the land received was inferior to the land given up. There is no indication in Appian that it was the Italians on whom this exchange of land was forced. It was merely the exchange alluded to in the Lex Agraria, verse 4. I am convinced that the strong opposition of the Italians can only be explained by remembering that their interest in the public land was involved in the corporate *possessio* of large parts of it by the Latin *municipia*.[2]

[2] I have thought it worth while to go into Mr. Ferrero's argument, because it is a good illustration of the many rash conjectures sometimes

We get no further light on the situation till the tribuneship of G. Gracchus in 123 B.C. Then the law of Tiberius seems to have been superseded by a new Lex Sempronia (Lex Agr. v. 1, &c.), virtually a re-enactment of the former, certainly exempting from division the Campanian and other leased lands (see the recurring clause in the Lex Agraria), and as certainly restoring full judicial powers to the triumvirs in all matters affecting public land. Undoubtedly a fresh impulse must have been given to the work of assignation, and by the end of his second tribuneship I suspect that few of the old possessors had much more than their 500 jugera left. On the other hand, I infer from v. 31 of the Lex Agraria that little or no progress was yet made with the resumption of land in the occupation of colonies or Latin towns. Probably Gaius recognized that to carry out this part of the original agrarian programme without first dealing with the franchise question would be to provoke revolution or even intestine war.

Two other points belonging to the purely agrarian question may be mentioned in connexion with G. Gracchus. It was probably due to his initiative that portions of the public land, lying along the public roads, were assigned by the triumvirs to small tenants called *viasiei vicani*, in return for some services in repairing or maintaining the roads.[3] A more important point is the statement of Plutarch (G. Gracc. XI) that Livius Drusus abolished the quit rent so far exacted from the Gracchan allottees, thereby making their holdings private property *optimo jure*. If Gaius had thought this measure fatal to his agrarian scheme he would surely have opposed it, and as there is no record of such opposition, we may assume that he acquiesced in it. He was a practical statesman, and it must have become apparent during the past eleven years that the farming career of these

based on isolated passages apart from their context, sometimes, as in this case, on actual misinterpretation, often on mere shadowy probability, which make his book, in spite of its obvious attractions, an unreliable and often dangerous guide.

[3] The Lex Agraria confirms this arrangement. It appears from the lex that these persons were selected by decree of the Senate, no doubt because Italian roads were generally under senatorial control.

small holders, taken largely we may assume from the city population, was bound to be a hard if not hopeless struggle, and that the relief afforded by this law was a virtual necessity. Into the motives of Drusus we need not enter. They may have been wider than Plutarch represents them. That his concession to the Italians was more than a mere party move is perhaps indicated by the fact that as consul in 112 B.C., when there was no such immediate motive, he seems to have given the Latins certain advantages in reference to the public land (Lex Agr. v. 29).

It remains to notice as part of the Gracchan scheme the projected establishment of colonies in Italy and beyond the sea. In the former, several colonies were to have been founded, but Plutarch mentions only two, at Capua and Tarentum.[4] There is no evidence that a colony was established at Capua, or any colonists settled there. Any such settlement would have been a violation of the agrarian law, by which the ager Campanus was specially exempted from division. Some steps, however, were taken to colonize Tarentum, which was to have been called Neptunia, and some colonists were established there by the triumvirs. Plutarch implies that they belonged to a more well-to-do class than the small allotment holders. (Cap. 9: they were χαριέστατοι not πένητες.) According to Plutarch, Livius Drusus, acting on instructions from the Senate, passed a law for the establishment of twelve colonies in Italy, exclusively for the poor, and 3,000 were to be sent to each. It is clear from Appian (I. 35) that the scheme was not carried out as a whole, but it is quite possible that a certain number of colonists may have been sent out.

How the land required for these twelve colonies was to be forthcoming is by no means clear. Quite possibly there was no serious intention of carrying out the scheme. But if it had been carried out, it must almost certainly have involved interference with the public land held on terms of *possessio* by the Italian communities already alluded to. This is implied, I think, by Appian in his account of the younger Livius Drusus, who had

[4] Whether Lex Agr. v. 43 refers to additional colonists sent to an older colony at Sipontum is uncertain.

the design of carrying out his father's colonization scheme. Appian says, in cap. 36, that the Italians were alarmed at this scheme, fearing that they would be deprived of the *ager publicus* which they still retained. This *ager publicus* must have been that which we find in the Lex Agraria, verse 31, secured in usufruct to the *coloniae et municipia civium Romanorum nominisve Latini.*

Of extra-Italian colonies, only one was attempted, that of Junonia, on the site of Carthage. This was established by a Lex Rubria in 122 B.C., and G. Gracchus and Fulvius Flaccus went out early in the year as two of the triumvirs, and marked out lots, apparently of 200 jugera each, for 6,000 colonists, a number in excess of that allowed by the law. On their return they proceeded to collect the 6,000 ἐξ ὅλης Ἰταλίας (App. I. 24). How many were actually sent out we cannot say; probably not the whole number, since the Lex Rubria was repealed either just before or just after the death of Gaius in 121 B.C. I have no doubt that Appian's phrase, ἐξ ὅλης Ἰταλίας, means that the colonists were taken both from Roman citizens and Italians, the latter presumably thereby acquiring the civitas.

The repeal of the Lex Rubria (notice the phrase in the Lex Agraria, 'lex Rubria quae fuit'), marked the end of the Gracchan legislation and in effect its failure. In design it had been a great and noble scheme. But the realization of its essential aims, the repopulation of Italy, the revival of agriculture, and the fairer apportionment of the public land, required economic insight even more than political daring and honesty. As long as the system of slavery remained unchecked, it was useless from an economical point of view to attack the latifundia system, while even from a political point of view the sudden and arbitrary resumption from the old possessors and the threatened interests of Italian communities introduced fatal complications. The great socialistic measure, the corn law, made the situation more difficult both politically and economically; politically, because it must have disinclined the poor citizens to leave Rome for the hard and uncertain struggle on the small allotments (it was perhaps owing to this that the colonies of Drusus were not carried out, and that Gracchus was compelled to make up his

6,000 colonists for Junonia from Italy); economically, because the lowered price of corn in the capital, though only affecting Rome directly, must have reacted on the rest of Italy, though no doubt Ferrero is right in insisting that in no case could the Italian farmers at a distance have sent their corn to Rome.

After the death of G. Gracchus, therefore, the agrarian situation was one of hopeless confusion. The small holders, probably very numerous, in most cases quite unfitted for farm work, were, in spite of the alleviation granted by Drusus, disillusioned, and anxious to get out of their false position; and yet forbidden to sell their holdings.

The possessors were angry and restless. Large portions of *ager publicus* were still in their possession, and the uncertainty of their tenure had been brought home to them. The triumvirs were still in existence, still retained judicial powers, and might still continue the useless and even mischievous work of assignation. Mr. Strachan-Davidson assumes that many of the possessors had still more than the 500 jugera allowed them by Gracchus, and complains that the Lex Agraria does not inform us what was done with this surplus. He believes himself that like the 500 jugera it became the private property of the possessors. I do not think this is possible. V. 2 of the Lex Agraria, while making the land left to the old possessor private, expressly stipulates that it shall not exceed the amount fixed by law. When we remember that the triumvirs had been in existence for fifteen years, with powers of assignation all the time, and with judicial powers for nine of those years, we can hardly imagine that the work of resumption was not practically completed. Above all, the position of the Italian communities interested in the public land was still uncertain. G. Gracchus had apparently held his hand, but as long as the triumvirs retained their powers there was no knowing what might happen.

Something therefore had to be done, whether from the senatorial or the popular side. The Gracchan scheme had failed, and the continuance of the restrictions imposed by it, the insecurities of tenure revealed by it, and, above all, the maintenance of the machinery by which it was to have been worked, were

simply impediments in the way of anything like political and economical stability.

It is from this point of view that we should consider the three laws recorded by Appian alone in cap. 27. Were they reactionary laws? Were they necessarily the work of the political opponents of the Gracchi? It was usually the characteristic of the Roman government to accept *faits accomplis*. There was admittedly no reactionary upsetting of the corn law, of equestrian juries, of the arrangement as to consular provinces, of the provisions with regard to vectigalia in Asia and Africa and of other laws certainly questionable from the senatorial point of view. Must we regard these agrarian laws as exceptions to this moderate attitude?[5]

The first law need not detain us. It was probably passed in 121 B.C. and removed the restriction placed by Tib. Gracchus upon the sale of the small holdings assigned by the triumvirs. Such a law was inevitable. The restriction had been in the first instance thoroughly uneconomic, though it may have seemed necessary to give the scheme a fair trial. But it was now obviously and purely mischievous. Economic conditions, against which laws are futile, made not only the success of many of these small farmers but their existence quite impossible. No doubt the effects of the repeal were in some ways deplorable. A natural retribution attends bad laws; even their repeal may do harm for the moment. The value of the lots must have been depreciated; the large owners got cheap bargains, and perhaps some, as Appian suggests, were induced to sell, who might have held on. At any rate it was the less of two evils.

But this could not possibly be the final step. There was clearly no further useful work for the triumvirs to do. It would be absurd to assign fresh lots merely to be bought up by

[5] We have a reference in v. 82 of the Lex. Agr. to a Lex Sempronia regulating vectigalia from land in Africa. We are of course familiar with the so-called *Lex de vectigalibus Asiae*. May not the law really have been one either dealing with provincial vectigalia generally, or at least with those in certain provinces, including Asia and Africa? The law may have had the object of meeting the financial burdens involved by the corn law.

the large owners; the work of resumption from the possessors was probably done, or if not, was no longer called for; the Italian colonization was at a stand-still, while the continued existence of the commission was a dangerous menace to the Italian possessors. Accordingly in 118 B.C.,[6] a second law was passed abolishing the land commission. At the same time, with a view of giving some greater security than the precarious position they had occupied since Tib. Gracchus to the old possessors, both individual and corporate, the author of this law in some way secured them their *possessio*. εἶναι τῶν ἐχόντων :— I agree with Mr. Strachan-Davidson that this refers to the possessors and not to the small holders, but it must have included the Italian communities with their corporate *possessio*, since their case was far more urgent than that of the individuals. Finally, as was only equitable, so long as the land was public, both classes of possessors were to pay a vectigal to the State. This last point, I imagine, was only a legal enforcement of existing custom, which had perhaps tended of late to become obsolete. The proceeds of this vectigal were apparently to be used for meeting some of the public expenditure involved by the corn law. There can hardly be any doubt that no vectigal was imposed on the small holders. They were certainly not in a position to pay it, and if the law emanated from the popular party, it would surely have recognized this, while if, as usually supposed, it came from the senatorial side, so had the law of Drusus, and the party could hardly contradict itself within four years. The law seems to have been a judicious one, and to have done something for all sections, but of course there was a sense in which by abolishing the commission, it had ended the Gracchan scheme. In a very intelligible sense this law might be described as having relieved the public land from the irregular and useless legislation of the Gracchi by abolishing the commission and imposing a vectigal. As will appear below, I believe this was how Cicero intended to describe the law.

[6] The date is fixed by Appian's phrase at the end of the chapter, '15 years after the Gracchan legislation'; which cannot refer to the third law, since that was demonstrably in 111 B.C., and must therefore refer to the second, which was in a modified sense the undoing of the Gracchan law.

I now come to the question as to the proposer of this law. The MSS. of Appian attribute it to Σπόριος Βόριος, the last name being usually emended to Θόριος. This emendation is made practically certain by the fact that Cicero (Brut. 36) speaks of a Spurius Thorius in connexion with a vectigal on the public land. But Cicero's statement about him has some appearance of being inconsistent with Appian's account of his law. I seem compelled to discuss this point under the second law, but the force of my argument will, I think, appear greater when the third law has been considered. Cicero says: *agrum publicum vitiosa et inutili lege vectigali levavit.* Is *vectigali* privative or instrumental? Apart from subject-matter, most readers would take the former sense. In that case, Cicero states one of two things, either he relieved the public land from an irregular and useless law which imposed a vectigal; or he relieved the public land from a vectigal by an irregular and useless law. Whichever translation we take, there is a prima facie reason for making Thorius the author of the third law, which according to Appian abolished the vectigal.[7] But when we turn to the third law itself, we find that it did not relieve any public land from vectigal. Every category of public land went on paying vectigal as before. It is true that the 500 jugera of the old possessors no longer paid vectigal, but that was because it became *ager privatus.* To describe such a conversion of public into private land as a freeing of public land from vectigal is surely a mode of expression of which Cicero would never have been guilty. Besides, this mode of translating the passage implies that Cicero regarded either the law of 118 B.C. or that of 111 B.C. as a *vitiosa et inutilis lex.* Cicero, no doubt, was not always very discriminative even in his study in his use of condemnatory epithets, but if we assume him to have known anything of these two laws, it is impossible to believe that he would have called either of them *inutilis,* and Appian gives no indication that either was *vitiosa,* i.e. passed in an irregular manner. It seems necessary therefore to take *vectigali* as the instrument. He relieved the public land from an irregular

[7] Mr. Strachan-Davidson, Dr. Greenidge, and Mr. Ferrero all seem inclined to take this view.

and useless law by imposing a vectigal. The law of Tib. Gracchus was *vitiosa*, because it ignored the *intercessio* of Octavius, and *inutilis*, because it had failed. Cicero was aware that this law of Thorius practically repealed the Gracchan measure, which, like Appian, he identifies with the law of Tiberius. He was also aware that Thorius imposed or insisted on a vectigal from public land. Not quite accurately he makes the latter the instrument of the former. He would have been more accurate if he had said he relieved the public land of a useless law by abolishing the land commission. Of course it does not matter whether Thorius, of whom we know nothing, was the author of the second or third law, but as the argument against the latter view amounts almost to demonstration, I thought it best to thresh the matter out.

We now come to the third law, the so-called Lex Agraria of 111 B.C., which can in no sense be described as a relief of the public land from the effects of the former law of Thorius, but was rather a supplement to, a continuation of, and in some parts probably a re-enactment of that law.

So far from being reactionary, the whole object and design of the law would seem to have been to acknowledge, sanction, and give precision to the *faits accomplis* since 133 B.C. Among these *faits accomplis* was undoubtedly the failure of the Gracchan plan as a working and living scheme for the regeneration of Italy on agrarian lines. The legal recognition of that failure had been embodied in the Lex Thoria, and I imagine that the series of clauses (vv. 33, 34, foll.) specifying the various magistrates who were to exercise judicial authority in cases of disputed land, and the legal proceedings to be taken, were either repetitions or modifications of enactments in that law. At any rate, after the disappearance of the land commission, some such regulations were the only means to prevent hopeless confusion. But further than this, within the general failure of the Gracchan scheme, certain parts of it had been carried out. These might be confirmed or modified or cancelled; but at any rate they must be put upon a regular legal basis, especially if the phrase *lex vitiosa* represented the views of any considerable section. Again, I suggest that the Lex Thoria had done this to a certain

extent, but perhaps more by not cancelling than by actually confirming. Thus to a large number of persons lots of 30 jugera had been assigned by the triumvirs. Till 122 B.C. these lots had been *ager privatus vectigalisque*. Since the law of Drusus, it had been private land in the full sense. But as the titles to this land depended upon the Commission, and the Commission had not only been abolished, but had perhaps itself depended upon a *lex vitiosa*, this law definitely confirms the private character of all such lots (vv. 5, 6). Again, a number of colonists had evidently been settled on land in different parts of Italy, and yet the colonies were not formally established. The position of these persons was very ambiguous; they were rather *in numero colonorum* than *coloni*. Their complete private ownership also the law confirms (v. 3). In both cases, however, if the holders had taken advantage of the law of 121 B.C., and sold their land, they were not allowed to appeal to the law of Tiberius which forbade such sale.

Once more, the triumvirs had resumed from the old possessors practically all public land exceeding 500 jugera. So far from cancelling this resumption, as a reactionary law might have done, this law confirms the limit, but with a view of putting an end once for all to this system of individual *possessio* in Italy, it converted the 500 jugera into private property and therefore abolished the vectigal imposed by Thorius (vv. 2 and 19). This is the only provision of the law which Appian mentions, and the only result of it in his eyes was that the people by losing the vectigal lost its last advantage from the public land. This was of course not true even in the matter of Italian land. The people was largely benefited in the persons of the small holders and colonists, whose land was also free from vectigal. It was benefited by several important categories of land still remaining public and paying vectigal as before. In any case, if the state lost a precarious revenue, to get rid once for all, as far as Italy was concerned, of the unsatisfactory tenure of *possessio* was probably worth the price. Nor must it be forgotten that this 'reactionary' provision was simply going back to what had originally seemed to Tib. Gracchus the most equitable arrangement.

Another question still required final settlement, a question probably affecting more land, and a greater revenue from it to the people, than the residue left to the individual possessors. We have seen how the Gracchan scheme had been complicated by the attitude and fears of the Italian communities; to whom public land had been given in possession, and how in all probability the Lex Thoria had guaranteed the tenure, and insisted on the vectigal. If there was still any doubt about the position of these communities, it was settled by verses 31 and 32 of this law, by which the usufruct and possession of the land was secured to them on the conditions existing prior to the law. Of the later history of this category of public land the usufruct of which was thus confirmed to the Italian communities, we have no definite knowledge. It would be mere conjecture to suggest that any agrarian scheme of Saturninus touched it, and I have already pointed out that there are indications of its continued retention by these communities in the time of Livius Drusus (App. cap. 36). It seems most probable, though it cannot, I think, be proved, that either as a result of the Social War or in the course of Sulla's dealings with the question of Italian land, this last trace of the *possessio* system in Italy finally disappeared. In some cases possibly the land may have been definitely added to the territories of the new full burgess communities. In others perhaps it may have been resumed or forfeited and used for purposes of colonization. At any rate there is no evidence in the Ciceronian period of its continued existence as *ager publicus* held in accordance with this law on conditions of usufruct.

Compared with these important settlements, the ratification of the exempting clause in the Lex Sempronia, excluding the *ager Campanus* from division, the confirmation of the *viasiei vicani* on strips of public land, the recognition of the claims of those holding public land *in trientabulis*, and even the conversion of land perhaps illegally occupied by possessors since the abolition of the Commission into private property, up to the limit of thirty jugera, are all instances in which *faits accomplis* are recognized and accepted.

Lastly, it must not be forgotten that at least one half of the

law, as we possess it, deals with the land in the province of Africa, and that the settlement here is as little reactionary as for Italy. The main reason for dealing with the African land was to raise money by the public sale of considerable portions of the public land in the province. Presumably this was intended to compensate for the loss of the vectigalia, hitherto paid by the possessors in Italy. Of course it may be said that this was a short-sighted policy, to put so much valuable land into the market at the same time, and we are entirely without information as to whether or how far the sale was carried out. The land sold was not to become private land in the full sense; it was to be *ager privatus vectigalisque* (v. 49), and though this category of land seems to have been got rid of in Italy, it may have been an improvement on the use to which this African land had been put before. At any rate, the greatest care was taken to exclude from this saleable land all land, whether public or private, in which vested interests were involved. In the first place, and no more decisive proof could be required that the law was not reactionary, the allotments of 200 jugera, assigned to the colonists under the Lex Rubria, were confirmed as their private property, although the Lex Rubria itself had been cancelled. How many of these colonists there were to take advantage of this equitable recognition of a *fait accompli* we do not know, but the number was not to exceed that specified in the colonial law, and so must have been less than 6,000 (v. 61).

Again, the various concessions made and obligations entered into after the third Punic war were loyally recognized. Not only were the seven faithful cities to retain their territories (v. 79), together with any additions made to them (v. 81), and the Carthaginian deserters to retain the lands assigned to them, but the hostile communities were confirmed, of course on payment of a stipendium, in the usufruct of the public land allowed them, and compensated if any part of that land had been sold in error (vv. 80, 81). Verses 79 to 82 are not less important in showing the loyalty and good faith of Rome as illustrated by this great law, than in throwing light upon the various tenures of land in Africa.

The law was reactionary in no single point. It did not undo

or cancel or overthrow the Gracchan legislation. On the contrary, in a large number of details it confirmed it. But it recognized that the Gracchan scheme as a whole had failed, and it did what was possible to prevent that failure from causing worse complications in the future. The agrarian question was of course not settled, but, at any rate, that particular form of it which for two centuries before the Gracchi had caused the rich to oust the poor and the poor to hate the rich, the question of *possessio*, was finally settled by this statesman-like law. Its author, unfortunately, we do not know. That it was some popular tribune, who sympathized with the Gracchan movement, I have no doubt. As there is no indication in the law of senatorial as opposed to popular leanings, we may at once dismiss the suggestion that it was G. Baebius. The facts that he opposed Memmius, and allowed himself to be bribed by the Senate to prevent Jugurtha from giving evidence, are arguments against rather than for such a view. Indeed, the senatorial reaction, which in political matters had followed the death of G. Gracchus, had practically spent itself by the year 111 B.C. We have only to remember the part played by Memmius in this year, the support he received both from the populace and the equestrian order, and the Mamilian Commission which soon followed, in order to realize that this was not the moment when a great reactionary measure, as it is often assumed to be, was likely to be proposed or passed. As there is absolutely no evidence as to the authorship, hypotheses are futile, but I would suggest that Memmius or even Servilius Glaucia, if he was tribune this year, might either of them, as far as internal evidence is concerned, have passed this great and weighty law, which shows that even in the revolutionary period, amid all the corruption and strife of the time, great questions could still be dealt with in a spirit of equity, compromise, and statesmanship.

CATEGORIES OF LAND

It will be convenient to summarize the categories of land in Italy left respectively private and public after this law.

Private Land.

I. All private land not in any way affected by the law.

II. The estates of 500 jugera, left by the Lex Sempronia to the individual possessors (v. 2).

III. All land actually assigned by the Gracchan Commissioners to Roman citizens, as colonists, whether at Tarentum or elsewhere (vv. 3 and 15).

IV. All land assigned in small holdings by the Gracchan Commissioners either to Roman citizens or to Italians (vv. 5 and 16).

V. All lands given to individuals whether by the triumvirs or otherwise, in compensation for private land taken by the State (vv. 4 and 27).

VI. All lands given to individuals by the triumvirs in compensation for private land taken for purposes of a colony. (v. 21 and foll.).

VII. All land irregularly occupied by individuals since 133 B.C., for purposes of agriculture, not exceeding 30 jugera (v. 14).

VIII. Possibly outside all these categories is the land spoken of in vv. 12 and 32, as *eum agrum quem ex h. l. venire dari reddive oportebit.* This is, however, uncertain.

Public Land.

I. The land exempted from division by the Lex Sempronia, including especially the *ager Campanus.* This was all let out on lease by the censors.

II. Almost under the same category was the land mentioned in v. 21 as let out by the censors of 115 B.C., and the land, whatever it was, *trans Curione.*

III. The land, whether *ager patritus* or not, which had been taken from private owners in exchange for public land given to them (vv. 27 and 28).

IV. The land assigned on usufruct or *possessio* to colonies and municipia, whether Roman or Latin (v. 31).

V. The land held *in trientabulis* by State creditors (v. 32).

VI. The land assigned to the *viasiei vicani* (v. 11).

VII. The *ager compascuus* (v. 14).

VIII. The public roads.

IX. The remaining public land, not included under any of the foregoing categories. This was mainly pasture land, and fees for grazing upon it were only collected by publicani for cattle exceeding a certain number (vv. 24 and 25).

CATEGORIES OF LAND IN AFRICA

Private Land.

I. The land confirmed, after *professio* before the [duovir, to the colonists, who had been sent out under the Lex Rubria. These colonists being all Roman citizens, their land was *ager privatus e jure Quiritium*, though after the cancelling of the Lex Rubria, it was really an instance of *viritim adsignatio* (vv. 45, 55, 59–61, &c.).

II. The territories of the seven free and allied cities, Utica, Thapsus, &c., which, as we shall see in the case of the free city of Termessus, was not public but private land. It was, however, *ager privatus jure peregrino* (vv. 75, 77, 79, and 80).

III. Not very different was the land assigned by the Senate to Himilco and his 2,200 Carthaginian deserters (v. 76, and see Liv. Epit. 50).

IV. Standing half way between private and public land, was the land sold in accordance with this law by the quaestor in Rome to private individuals. This was saleable and inheritable, but was subject to a vectigal, and was therefore *ager privatus vectigalisque*. It was not *adsignatus*, but *emptus* or *adjudicatus* (vv. 49 and 66).

Public Land.

I. The territories of the conquered communities after the third Punic war were forfeited and became *ager publicus*. By the

decemvirs this land was *datus adsignatusque* to these communities, which paid a stipendium for it, and might, like the *possessores* in Italy, be deprived of it. These communities were not *civitates* in the strict sense, and so the land is *hominibus stipendiariis adsignatus* (vv. 76, 77, and 80).

II. Certain portions of public land, handed over by the decemviri to the free city of Utica, and perhaps, as the long hiatus implies, to other free cities. This no doubt had to pay a *vectigal* (v. 81).

III. Some territory on the coast which Scipio, in delimiting Numidia and the province, had adjudged to belong to the latter, but which he allowed the sons of Massinissa to occupy and hold. The law implies that this arrangement still held good (v. 81).

IV. The ground on which Carthage itself had stood. This had been devoted by Scipio to perpetual solitude, and could therefore have been used neither for habitation, nor agriculture, nor pasturage. That it was not used for any of these purposes is implied in v. 81.

V. The public roads round Carthage and the colonial allotments (v. 89).

VI. The territory of towns actually destroyed, with the exception of Carthage, became *praedia populi Romani*, and were let out by the censors. This land was allowed apparently to individual possessors, as had been the case in Italy, but there was a *censoria locatio*, depending upon Senate or people. The possessors could be Romans, or Latins, or *peregrini* generally, including probably the inhabitants of the former cities. This land could at any time and for any reason be taken away, and could neither be sold by the possessors nor pass to their heirs. This land is the main subject of v. 78 to the end.

LEX AGRARIA OF 111 B.C.

SECTION I: LAND IN ITALY

1 . . . . . tribunes of the plebs duly proposed and the plebs duly decreed . . . the . . . . . tribe voted first, the first tribesman to vote was Q. Fabius, son of Quintus.

As respecting the public land belonging to the Roman people within Italy in the consulship of P. Mucius and L. Calpurnius (133 B.C.) excluding that land [1] which by the law or plebiscite of G. Sempronius Gracchus, tribune of the plebs, was by special
2 enactment excepted from division, whatsoever land or ground each several original possessor [2] in accordance with the law or plebiscite took or retained for himself, provided that the measure of such land shall not exceed the amount which by the said law an individual may take or retain;

As respecting the public land belonging to the Roman people within Italy in the consulship of P. Mucius and L. Calpurnius, excluding that land which by the law or plebiscite of G. Sempronius Gracchus, tribune of the plebs, was by special enactment
3 excepted from division . . . . . whatever land or ground a triumvir, in accordance with the law or plebiscite, has given or assigned to any Roman citizen allotted to a colony,[3] not lying
4 beyond [4] . . . . .

[1] The land excluded in this recurring exception is mainly the *ager Campanus* (Cic. de Leg. Agr. II. 29. 81). It would preclude therefore a colony at Capua, which if carried out would have been in contravention of this clause in the Lex Sempronia.

[2] The *vetus possessor* was the possessor before 133 B.C., whose *possessio* had been fully recognized by the triumvirs. The first category of land made private consists of the estates of 500 jugera allowed to possessors by the Gracchan law.

[3] The second category is the land already assigned and now therefore only confirmed to a colonist, probably at Tarentum. The words *civi Romano* added in the case of colonies alone are in favour of the view that in other applications of the *ager publicus* the Italians were included. This view is also favoured by verse 29. For colonists, whose number was always limited, there was a *sortitio*, which in the case of *viritim adsignatio* was unnecessary.

[4] This was probably to exclude the Greek city of Tarentum, which did not form part of the colony.

As respecting the public land belonging to the Roman people within Italy in the consulship of P. Mucius and L. Calpurnius, excluding that land which by the law or plebiscite of G. Sempronius Gracchus, tribune of the plebs, was by special enactment excepted from division . . . . . whatever such land has been given, assigned, or rendered by a triumvir to an individual, in return for private land exchanged for public;[5]

As respecting the public land belonging to the Roman people within Italy in the consulship of P. Mucius and L. Calpurnius, excluding that land which by the law or plebiscite of G. Sempronius Gracchus, tribune of the plebs, was by special enactment excepted from division . . . . . whatever portion of such public land 5
or ground, within Italy or outside the city of Rome, or in a city, or in a town or village, any individual shall hold or possess, at the time when this measure becomes law,[6] such land having 6
been given or assigned by a triumvir;

As respecting the public land belonging to the Roman people within Italy in the consulship of P. Mucius and L. Calpurnius, excluding that land or ground which by the law or plebiscite of G. Sempronius Gracchus was by special enactment excepted from division . . . . . whatever portions of such land[7] or 7
ground within Italy a triumvir has given or assigned or left to any individual, or has entered or caused to be entered in the land lists and schedules;

All such land, ground or building above mentioned, excluding that land or ground specially excepted, as aforesaid, shall be private

[5] These exchanges, often compulsory, are alluded to in Appian I. 18. This clause seems repeated in verse 27. Perhaps the exchanges mentioned in the latter passage were not limited to those effected by the triumvirs.

[6] This seems to refer to any land assigned *viritim* by the commission between its establishment by Tib. Gracchus and its abolition in 118 B.C. Again the private character of the land is only confirmed. As long, however, as a quit-rent was paid for the plots the land was technically *privatus vectigalisque*. Livius Drusus is said to have abolished the quit-rent. The recipients of this land would become members of the *oppidum* or *vicus* in which their lands were situated. This clause is surely conclusive against Mommsen's suggestion that the Lex Thoria may have given back the small holdings to the possessors.

[7] This clause merely sums up the previous categories.

8 land,[8] and of all such land, ground or building there shall be the same right of purchase and sale as for other private lands, grounds or buildings; and the censor for the time being shall see that such land, ground or building, made private by this law, shall, like other lands, grounds or buildings, be entered in the census . . . . . and in the matter of the said land,
9 ground or building he shall order the owner of the same to make the same declaration which in the matter of other lands, grounds or buildings he shall have ordered the several owners to make . . . . nor shall any person take any steps whereby individuals lawfully holding the said land, ground or building in accordance with the law or plebiscite shall be prevented from using, enjoying, holding and possessing the same . . . . . nor
10 shall any person make a proposal to that effect in the Senate; . . . . . nor shall any one by virtue of a magistracy or imperium express or bring forward any proposal, whereby the person whose possession of such land, ground or building is or shall be established by a law or plebiscite . . . . shall be prevented from the use, enjoyment, holding or possession of the same, or whereby its possession shall be taken away, without the consent of the owner, if living, or of his heir, if deceased.

As respecting that portion of the public land belonging to the
11 Roman people within Italy in the consulship of P. Mucius and L. Calpurnius . . . . . which the triumvirs for giving and assigning land have in Italian territory given, assigned or left to the viasici vicani,[9] it shall not be lawful to prevent the same from the use, enjoyment, holding and possession of such land,
12 so far as the possessor . . . . . shall not have alienated the said land, ground or building, this clause shall not apply to that land . . . . . or to that land which in accordance with this law may properly be sold, given or restored.

It is not intended by this law that the land, ground or building

[8] Only the first category of land was now for the first time made private. In the other cases the private ownership is simply confirmed.

[9] The *viasici vicani*, only known from this passage, seem to have been planted on lands along the public roads, and in lieu of rent to have undertaken the maintenance and repair of the roads adjoining their holdings. The custom may probably date from G. Gracchus. The following clause shows that the land was still *ager publicus*.

so given, assigned or left to any person included or to be included by decree of the Senate among the viasiei vicani, shall be private land, ground or building, or that the censor for the time being shall enter the same in the census, or that the conditions of such 13
land shall be other than they are at present.

As respecting the public land belonging to the Roman people within Italy in the consulship of P. Mucius and L. Calpurnius, excluding that land which by the law or plebiscite of G. Sempronius Gracchus, tribune of the plebs, was by special enactment excepted from division, and excluding that land which in accordance with the law or plebiscite an original possessor took or retained, so far as the measure of such land shall not exceed the amount allowed to an individual by the law to take or retain, whatever portion of such land, not exceeding 30 jugera, any individual shall have entered upon[10] (since 133 B.C.) with 14
the view of tillage, and shall hold or possess, all such shall be private land.

No person who shall graze on any ager compascuus[11] larger beasts not exceeding ten with their young up to a year after birth, or smaller beasts not exceeding . . . . with their young up to a year after birth, shall be bound to render to the people 15
or to a tax farmer any money, fee or rent for such beasts, or to make any return or payment for such privilege.

As respecting the public land belonging to the Roman people within Italy in the consulship of P. Mucius and L. Calpurnius, every Roman citizen, to whom as member of a colony, any part

[10] Fresh *possessio* was probably illegal after 133 B.C. It seems to be implied by this clause that at some point, possibly after the death of G. Gracchus, portions of the public land began again to be occupied irregularly by *possessores*. The present law recognizes such occupation but limits it to 30 jugera and makes that amount of land private. These irregular possessors are in fact put into the position of the Gracchan small holders, but a condition is, that the land is occupied for arable purposes. The amount of the small holdings, 30 jugera, is mainly an inference from this clause.

[11] The *ager compascuus* was public land on which the farmers within a certain district had the right of grazing. By the nature of the case such land could not be made private property, the privileged persons being too vague a body to constitute a corporation.

of such land shall have been given or assigned by a triumvir in accordance with a law or plebiscite, ... provided that neither
16 he nor his heir nor a person obtaining the land from him by inheritance or testament or gift, nor a purchaser from any of the foregoing, has alienated or shall have alienated such land, shall before the Ides of March next following appear before the court[12] of the official competent by this law to adjudicate on such land, and the said official shall so adjudicate and decree, that legal possession shall be secured to the said person or his heir in respect to such land given or assigned in a colony, always provided that such land shall not have been alienated as aforesaid.

As respecting that part of the above-mentioned public land, which a triumvir has given, assigned or restored to an original possessor or a person recognized as such,[13] or that part which a triumvir has given, assigned or restored in the city or in a
17 town or village, provided that such land is not and shall not be alienated[14] either by the recipient or his heir or by any person obtaining the land from him by inheritance or testament or gift, or by a purchaser of the land from any of the foregoing; every such person shall, before the Ides of March next following, appear before the court of the official competent by this law to adjudicate on such land; and the said official shall so adjudicate and decree, that the legal possession of all such land given, assigned or restored to the original possessor or the person re-
18 cognized as such, shall be secured to the said possessor or his heir or to the recipient of such land in the city or a town or a village.

Every owner of the above-mentioned land who shall be forcibly ejected[15] at the hands of another from the possession of land,

[12] This clause is to direct the colonists, whose land is confirmed in verse 3, how to obtain legal possession if by any chance they have lost it, and how to make it inheritable. Similar directions are given with the same object to the *vetus possessor* and the recipients of the small holdings.

[13] The *pro vetere possessore* is the person whose position is not as strictly legal as that of the *vetus possessor*, but who still has been recognized by the triumvirs. The Ides of March were the beginning of the Roman financial year. [14] Such alienation could only have taken place after the law of 121 B.C. mentioned by Appian. [15] Many cases of forcible ejection may have taken place after the death of Gaius Gracchus.

such land not having been taken from the said person so ejecting him either by force or clandestinely or on sufferance, shall, before the Ides of March next following the passing of this law, appear before the court of the official competent by this law to adjudicate on the matter;[16] and the said official shall take steps that 19
the party so forcibly ejected shall be restored to possession.

As respecting the public land, ground or building belonging to the Roman people within Italy in the consulship of P. Mucius and L. Calpurnius, in respect of all land which by law or plebiscite or by the effect of this law has become or shall become private property, no magistrate or pro-magistrate shall, from the time when the taxes shall first become due after the passing of this law, either as rent for the said land, ground or building or as fee for cattle grazed upon the same, take steps whereby any owner 20
shall give or be bound to give to the people or to a tax farmer any money, fee or rent[17] . . . or whereby anything shall be given on that ground to the people or to a tax farmer, or be exacted therefor; nor shall any person, from the time when the taxes shall first fall due after the passing of this law, be bound to make any payment to the people or to a tax farmer on behalf of the said lands, grounds or buildings, or to pay to the people or to a tax farmer any fee for the cattle grazed upon the said land.

As respecting the public land or ground belonging to the 21
Roman people within Italy in the consulship of P. Mucius and L. Calpurnius, ... excluding all that land which the censors[18] L. Caecilius and Gn. Domitius let on lease on the

[16] These officials are dealt with in verses 33 and following.

[17] This is the clause in the law which is especially alluded to by Appian in chap. 27, when he says that 'another tribune' abolished the *φόρος*. Appian's statement is thus perfectly correct but very misleading as to the nature of the law as a whole. The land now freed from vectigal is not that of the colonists or the small holders, for the former never paid it and the latter not after the law of Drusus. It refers only to the land of the *possessores* and therefore cancels that point in the Lex Thoria. This abolition of *vectigal* was only to come into operation after the next date at which the *vectigalia* fell due.

[18] This censorship was in 115 B.C. It was clearly the last censorship before the passing of this law. This clause refers to land taken away from the possessors by the triumvirs in order to be used for purposes of a colony. The land given in compensation for that so taken away was

21st of September together with the territory beyond Curio, either to Roman citizens in the said land, or to those of the allies and
22 Latin name, from whom soldiers are wont to be requisitioned in Italy according to the military roll, ... whatever portion of the aforesaid public land or ground belonging to the Roman people within Italy in the consulship of P. Mucius and L. Calpurnius, excluding also that land which by the law or plebiscite of G. Sempronius Gracchus, tribune of the plebs, was by special enactment excepted from division, has been given,
23 rendered or assigned by a triumvir to an original possessor or a person recognized as such, in return for public land or ground which the said possessor or a person recognized as such has given up out of his own possession, to the end that in such land or ground a town or colony might in accordance with the law or plebiscite be established, planted or placed, and in which a triumvir has established, planted or placed such town or colony, . . . such land shall be the private property of the person to whom the same was given or assigned, or of any person succeeding to such land from him or his heir by inheritance,[19] testament or gift, or of a first or second purchaser of the said land from any of the foregoing.

As respecting such public land or ground belonging to the Roman people, as a triumvir has given, rendered or assigned in return for land or ground on which he has planted a colony, as aforesaid, the praetor or consul, adjudicating in accordance with this law on such land, ground or building, to whose court applica-
24 tion shall be made[20] before the Ides of March next following,

to be private land. Why the clause did not come at the beginning of the law among the other categories of land made private is not clear. Perhaps it was simply overlooked. What land was let out by the censors in 115 B.C. we do not know, nor is the land 'trans Curione' to be explained. Possibly some colony had been planted there which had been cancelled, and therefore compensation was out of place. The last exclusion no doubt precluded any claims on the score of a colony at Capua. It is clear that land might be let by the censors to Latins as well as to citizens. The *formula togatorum* is the military roll of Italians, whether members of a Latin community or *civitas foederata*, see Livy XXII. 87.

[19] Inheritance as opposed to testament implies intestate succession.

[20] This clause simply directs the compensated possessor how to obtain legal possession from the proper legal authority, on whom see verse 33.

shall so adjudicate and decree that legal possession of such land shall be secured to that person or his heir, to whom a triumvir has given, rendered or assigned such land in return for land on which he has planted a colony, and the said praetor or consul, to whose court application on such matter shall be made, shall take steps . . . . . .

As respecting every portion of the land or ground above mentioned, which after the passing of this law shall be public land [21] belonging to the Roman people excluding that land which is reserved for public purposes or which is let out by public authority, in all such land it shall be lawful for all who will to 25 graze cattle, ... nor shall such land be ager compascuus, nor shall any person occupy or fence in land within the same, nor interfere with the right of all to graze cattle thereon.

Any person acting in violation of this clause shall for every such act be liable to pay for every jugerum concerned fifty sesterces to those who have acquired the usufruct, purchase or lease of rent charges for the said land.

It shall be lawful to graze upon the land or ground which, 26 after the passing of this law, shall be public land belonging to the Roman people, cows, horses, mules or asses up to the number of beasts prescribed in this law, and no person shall be liable to pay rent or fee for such right.

No person driving animals for convenience of travelling into the public lanes or roads shall be required to make any payment to the people or to a tax farmer for those animals which are fed or let loose in the public lanes or roads for such purpose. 27

[22] As respecting the public land belonging to the Roman people

[21] The law now passes from private to public land. This clause deals with public land not let out like the *ager Campanus*, nor devoted to public purposes like the public roads or land held *in trientabulis* or assigned to corporate communities. It consists mainly of pasture land which is not to be occupied or fenced in but on which all may graze a certain number of cattle, only paying a fee to a *publicanus* for any over that number. Its distinction from *ager compascuus* is obvious. The virtual effect of this clause is the abolition for the future of the whole system of individual *possessio*, surely a more important element in the law than the abolition of vectigal singled out by Appian to describe it.

[22] The first half of this clause except that no mention is made of a triumvir is the same as verse 4. It is probably inserted here merely

within Italy in the consulship of P. Mucius and L. Calpurnius, whatever portion of such land the Roman people shall by exchange have made private, receiving in lieu of such land or ground an equal amount of private land, all such land or ground shall with the fullest legal title be the private property of the owners.

As respecting land acquired by the State from private owners, in return for which an equal amount of public land has been given in exchange, the law shall apply in such manner exactly as if the said land had been public in the consulship of P. Mucius and L. Calpurnius.

[As respecting land, known as ager patritus,[23] acquired in exchange by the State from private owners, . . . the praetor or
28 consul for the time being shall see that the price paid by tax farmers for the rent contract of the said land formerly ager patritus in the censorship of L. Caecilius and Gn. Dom]itius, shall also be paid under future censors by tax farmers desiring to contract for the rent-charge of the land in question, and that

as the converse of the following, which like the other clauses in this part of the law deals with the public land.

[23] This difficult clause refers to an exchange of land between the State and a private owner whose land was *ager patritus*. Mommsen thinks that the clause safeguards the interest of the private owner and allows him to register his new land, which of course is not *ager patritus*, as if it were. I do not see how this explanation is reconcilable with the mention of the *publicani*, who can only be concerned with land which is now public. Besides, this part of the law is dealing with public land, especially that class of public land referred to in verses 24 and 25, and not with land that has become private. The clause is surely to safeguard the State in respect to the rent of its newly acquired land. There may have been some technical difficulties in *ager patritus* becoming public, and this clause sanctions and specifies the rent-charge to be got from it as public land through the *publicani*, the contract made in the censorship of 115 B.C. to be observed. It also allows the *publicani* to register it in the aerarium as if it were still *ager patritus*. I have no doubt that this *ager patritus* acquired by the State fell into the category of public land dealt with in verse 25, i. e. land mainly pastoral, the *publicum* or rent-charge of which was collected by *publicani*; see the concluding words of verse 25. It should be noted that all the beginning of the clause within square brackets is supplement. I assume it to begin *quei ager patritus ex privato in publicum commutatus est.*

they shall register such land in the aerarium under the head of ager patritus.

It shall be the duty of the two road-commissioners [24] to see that the public roads, as they existed throughout Italy in the consulship of P. Mucius and L. Calpurnius, be kept open and 29
unoccupied . . . . .

Whatsoever act in accordance with this law, as specified above, may, upon the public lands belonging to the Roman people in the consulship of P. Mucius and L. Calpurnius, be lawfully performed by a Roman citizen, and in like manner by a Latin or other non-citizen, from the consulship of M. Livius and L. Calpurnius,[25] in accordance with a law or plebiscite or special treaty, such act it shall be lawful for each and every such person to perform without risk of penalty.

As respecting acts which, in accordance with this law as specified above, it shall be proper for a Latin or other non- 30
citizen to perform or not to perform upon the above-mentioned lands, if any such person shall have omitted some act incumbent on him by this law, or shall have committed some act prohibited by this law, then the magistrate or promagistrate, to whose court application shall be made on the matter, when a petition is made in accordance with this law, shall grant such petitioner a trial, a judex or recuperatores, in such manner as it would be proper to grant a trial, a judex or recuperatores, if the petitioner demanded a trial on the ground that a Roman citizen 31
had violated this law.

As respecting land, the usufruct of which has been given [26] by

[24] The *duoviri* mentioned here are the *duoviri viei extra propiusve urbem Romam passus M. purgandei* of the Lex Jul. Mun. v. 50.

[25] It would seem that some additional rights in relation to the public land must have been conferred upon non-citizens in the consulship of Livius Drusus and Calpurnius, namely 112 B. C. Livius Drusus had, of course, according to Plutarch, been to some extent the champion of the Italians in his tribunate.

[26] Probably large quantities of the public land had been, previous to the Gracchi, handed over in this way to Roman and Italian municipalities. It was partly because the Italian municipalities feared that this land would be affected by the Gracchan resumption that they were, as Appian states, so strongly opposed to the Gracchan laws. It was not the least valuable part of the present law that the possession of these Italian

the people or by decree of the Senate to colonies or municipia, or to towns in the position of municipia or colonies, inhabited by Roman citizens or members of the Latin name, or land mortgaged in trientabulis to State creditors,[27]—and as respecting colonists or members of a municipium or town in the position of a municipium, enjoying such land, or persons enjoying such land on behalf of a colony or municipium, or town in the position of a municipium, or persons enjoying such land as State creditors
32 . . . . all such land, held by colonists or members of a municipium or town in the position of a municipium, or by persons deriving their holding from a colony or municipium, or from a town in the position of a municipium, and all such land, belonging now or in the future to the said State creditors by testament, inheritance or gift . . . . assuming the said persons to have had the right before the passing of this law to hold on
33 lease, enjoy, possess or lay claim to the said land or ground, and excluding the land or ground which in accordance with this law may properly be sold, given or employed in payment of debt . . . . all the above-mentioned land pertaining as aforesaid to such several persons before this law, it shall be lawful in like manner after the passing of this law to hold, use, enjoy, possess or assert title thereto.

As respecting any portions of the public land belonging to the Roman people in the consulship of P. Mucius and L. Calpurnius which by former law or plebiscite or by this law has become private land, previous to the Ides of March next following, in

towns was now safeguarded. Probably the *pro colonieis* are the Latin colonies and the *pro moinicipieis* other towns of Latin right. Those who enjoy 'on behalf of a colony or municipium' are the individual *possessores* deriving their *possessio* not directly from Rome, but from their own communities. It is sometimes urged that the lands assigned in this way to the Italian communities were given by a *foedus* and could not therefore be resumed, but surely no *possessio*, essentially a precarious tenure, could be given by an enduring *foedus*. The words, too, *poplice deve senati sententia* preclude a *foedus*.

[27] With regard to the State mortgagees, see Livy XXVI. 36, and XXXI. 13. They were the descendants or heirs of those who had lent money to the State in the Hannibalic war, and who, in lieu of repayment, had received portions of public land for which they were to pay a nominal rent until the debt was redeemed.

the case of any dispute[28] about such land or ground, jurisdiction and the appointment of a court, a judex or recuperatores shall belong to the consul and praetor for the time being; . . . . 34 and no magistrate or promagistrate save a consul or praetor shall adjudicate on such land or ground, or appoint a court or a judex or recuperatores. But in the case of bail being required by the consul or praetor from any person in such matter, and of appeal being made to other magistrates on such point, it is not the intention of this law to prevent the magistrates, to whom such appeal is made, from issuing a decree on the matter. Whatever court or judex or recuperatores shall be appointed, it is not the intention of this law to prevent any magistrate to whom appeal shall be made, if the said matter shall not seem to them advan- 35 tageous to the Republic, from hindering or vetoing the same.

As respecting all land or ground in Italy, which after the passing of this law shall be public land, belonging to the Roman people, in case of dispute about such land or ground, jurisdiction and the appointment of a court, a judex or recuperatores shall belong to the consul, praetor or censor[29] for the time being, as shall seem to them consistent with the interest and good faith of the Republic;[30] and no magistrate or promagistrate, save consul, praetor, or censor, shall adjudicate or decree in respect of such

[28] The Lex Thoria having abolished the land commission, it was necessary for this law to define the judicial authorities to be applied to in disputes concerning land. Ordinary suits about land between private individuals would of course go before the ordinary courts and fell outside this law. But disputes between private individuals respecting land just made private were to go before a consul or praetor alone. These would of course be immediate cases like those contemplated in verses 16 and 17 or 23, and this special jurisdiction of the consuls and praetors would no doubt end with the Ides of March following the passing of the law, after which the permanent judicial authorities specified in verse 35 would act.

[29] For disputes about the public land between individuals and the State or individuals and the *publicani* the magistrates with *imperium* were to have quasi-judicial but really administrative authority. These were consuls, praetors and censors, and in the case of the Italian communities, proconsuls and propraetors (see verse 37).

[30] This phrase, as Mommsen points out, is more applicable to equity, that is, to administration, than to strict law.

land or ground, or appoint a court, a judex or recuperatores. In the case of bail being required from any person in such matter, and of appeal being made to other magistrates, it is not the intention of this law to prevent the magistrates to whom appeal is made from issuing a decree on the matter. But such court, judex or recuperatores having been appointed by a consul,
36 praetor or censor, in the event of any person appealing from him on such matter to other magistrates, and in the event of any such magistrate not regarding the said court to be consistent with the good of the Republic, it is not the intention of this law to prevent such magistrate from hindering the said court or using his intercessio.[31]

In the case of money due in accordance with this law to any tax farmer, no magistrate shall take action in such matter, whereby any person shall pay less fee or rent in respect of land, or pay otherwise than as he is bound to pay in accordance with this law . . . . . .

37 In the case of a tax farmer declaring that anything is due or owing to him in respect of such matter, the consul or proconsul or praetor or propraetor, to whose court application shall be made, shall within the ten days following such application appoint eleven recuperatores[32] taken from a list of fifty citizens belonging to the first class; from these he shall cause the petitioner and
38 defendant alternately to reject any individuals, not exceeding four each; the remainder, whether three or more than three, he shall order to give a judgement concerning the said matter, on the first possible day, where payment has not been made, or the matter is not still before a court or has not been adjudged,[33]

[31] These land courts, as liable to interference under certain conditions by the tribunician veto, were on a different footing from the *quaestiones perpetuae*, with which no such interference was possible. In fact the possibility of *intercessio* here and in verse 34 points to the purely quasi-judicial character of this jurisdiction.

[32] This recuperatorial *judicium* with regard to the claims of *publicani* clearly takes place in Italy and not in Rome, and this is why the censor is not mentioned. Of course proconsuls and propraetors were often employed in Italy at this period. One out of the five *decuriae* of *recuperatores* is taken and one person added to get an odd number.

[33] These are the ordinary exceptions inserted in the magistrate's formula.

always assuming that there has been no collusion or bad faith on the part of the petitioner or his advocates. 39

If a majority of the said recuperatores come to a decision, he shall pronounce that in his sentence, in accordance as near as may be to the facts of the matter under dispute; . . . . . and in respect to the matter adjudicated, he shall cause the party against 40 whom judgement has been given to make payment in good faith.[34]

If any law or plebiscite is passed which prohibits persons lawfully holding, possessing and enjoying public land in accordance with this law from such holding, possession and enjoyment; or which authorizes persons to hold, possess and enjoy such land otherwise than is allowed by this law; then, no person ordered to take oath to such laws or plebiscites, and refusing to take such 41 oath, shall be subject to penalty or fine . . . . nor shall be precluded from lawfully seeking, taking or holding any magistracy, nor shall such action be attended by risk of penalty.

If any law or plebiscite is passed which prohibits a magistrate bound by this law to make decree concerning any matter from making such decree . . . . the said magistrate shall, notwith- 42 standing, make decree concerning the said matter . . . . . and whatever acts any person is prohibited from performing by the said laws or plebiscites which this law shall order him to perform, it shall be lawful for him without risk of penalty to perform all the said acts, and without risk of penalty he shall refuse to take oath to the said laws or plebiscites touching any matter on which in accordance with this law . . . . . it shall be proper either not to make decree or to make decree in other manner, nor shall such action be the cause of fine or penalty . . . .

[As respecting the land] . . . . has given or assigned, or 43 the land or ground which in accordance with the law or plebiscite of M. Baebius,[35] tribune of the plebs, and a triumvir 44

[34] The equitable character of this law is shown by the fair dealing accorded to the *publicani*. In a purely reactionary law we should have expected less consideration for men whose position and importance was so largely due to the Gracchan legislation.

[35] This mutilated clause clearly refers to some colony, and Mommsen

for the planting of the colony, ... has adjudged to be or to have been given and assigned, ... excluding the land or ground which is situate in the said plot or sub-plot . . . . . .

SECTION II: ON THE LAND IN AFRICA

45 [As respecting the land in Africa] . . . . and excluding that land or ground which in accordance with this law the colonists [1]
46 or those registered as colonists shall hold . . . . whatever portion of such land or ground has been sold [2] to any person, ... nor on that account shall the purchaser, his sureties and securities be free from all obligation,[3] and the quaestor who has the aerarium as his province shall have the names of such
47 purchasers registered in the public accounts, ... nor shall the person who has bought such land from a Roman magistrate,[4] pay money to the people for the same, nor furnish sureties or securities, ... nor shall any person in such
48 case, through having become a surety, be under obligation to the people, ... person who in respect to such land or ground has become purchaser or surety, and the security

supposes that the colony in question was at Sipontum. Livy XXXIV. 45 speaks of the foundation of a colony at Sipontum *in agro Arpinorum* by a law of the tribune M. Baebius Tamphilus, who was also one of the triumvirs for planting the colony. This was in the year 196 B.C. The provisions of this clause it is impossible to determine, but perhaps G. Gracchus may have sent fresh colonists to the place. These two fragmentary verses seem in a way intermediate between the Italian and African sections of the law. Some editors have placed them in the latter, but this is probably wrong.

[1] It seems clear that in spite of the cancelling of the Lex Rubria, the rights of all colonists actually settled on what was to have been the colony of Junonia are now recognized and confirmed. The phrase 'or registered as colonists' is necessary because after the cancelling of the Lex Rubria they were not colonists in the strict sense.

[2] The beginning of this section deals with the sale, clearly effected before the passing of the law, of certain public lands in Africa, excluding among other categories the land of the colonists.

[3] If the purchaser paid at once or within a certain date, he had no need of sureties. What circumstances exactly these words refer to is not clear.

[4] The magistrate who sold the land was the quaestor of the aerarium.

which in the said respect has been pledged to the people, ...
. . . . such land or ground, which being situate in Africa, has
been sold by the people in Rome, ... shall belong to such
person, and the said land or ground shall be private land, but 49
subject to a vectigal,[5] . . . . . whatever part of such land
outside Italy, ... a member of the allies or of the 50
Latin name,[6] from whom, according to the military roll, soldiers
are wont to be requisitioned in Italy, ... or that land or
ground whatsoever he shall hold, possess or enjoy, ... 51
or shall be . . . into the said land or ground to the end of
acting as agent in such concern, ... without wrongful
intent.

As respecting land or ground in Africa, whatever portion of 52
such land, ... he shall hold, possess and enjoy, in like
manner as if the said land or ground was sold by the people at
Rome . . . . .

The duovir,[7] appointed or created in accordance with this law,
shall within the space of two days after his appointment issue
an edict,[8] [to the effect that formal claim shall be made] within 53
the twenty-five days next following the issue of such edict, [to
such land as] has been given or assigned, and when any person

[5] The Latin phrase is *ager privatus vectigalisque*. Apparently the small lots assigned under the law of Tib. Gracchus came under this description. It was a somewhat anomalous arrangement and as far as Italian land was concerned was done away with by the first section of this law. The land was still public in law but private in fact. The vectigal was no doubt nominal and was only to mark the fact that, as in the case of the Italian land 'in trientabulis,' the people still had rights in it. The law is too fragmentary at this point to make continuous translation possible.

[6] This clause is too fragmentary for much meaning to be got out of it. The mention of allies and Latins does not imply that purchasers of this land need not be Roman citizens, but is possibly referring to other land of which *peregrini* might be possessors.

[7] The duovir is always mentioned in the singular, as he is in the third section dealing with the Corinthian land. In all probability, therefore, two commissioners were appointed by this law, one for Africa, the other for Achaia. The functions of the duovir were clearly *agris dandis adsignandis judicandis*.

[8] The edict evidently orders purchasers of land and also the colonists to make formal declaration of it within twenty-five days.

shall make such declaration [he shall produce] vouchers, ...
54 . . . a purchaser from a second party under the conditions of a private sale, ... [such sale] having been effected in the consulship of [P. Cornelius] and L. Calpurnius,[9] provided
55 that neither the party himself nor [his heir has since alienated the said land] . . . . . as an officer or soldier[10] in the province, ... [whatever portion] has been given or assigned to a colonist or one registered as a colonist, or whatever portion of the said land . . . . . .
56 . . . . . that the legal agent of such person shall make the declaration in the same manner as . . . . . [the duovir] shall in accordance with the said edict that the person who has bought the land from the purchaser, receiver or administrator of such bankrupt's property[11] . . . . . .
57 If any matter which by the edict of the duovir ought to have been declared in accordance with this law, has not been declared as aforesaid . . . . . the duovir shall adjudicate that the land
58 or ground has not been bought by or assigned to the person[12] concerned . . . . . it shall be lawful to give, render or grant in compensation to such Roman citizen an equal portion of land or ground . . . which has not been sold[13] by the people, ...
59 [14] The duovir appointed or created in accordance with this law

[9] These are the consuls for 111 B.C., the year in which the law was passed. But this clause and the next are too fragmentary to admit of explanation.

[10] This reference to military service in the province is obscure, possibly a colonist or purchaser of land unable for this reason to make the *professio* before the duovir is allowed to do so through a *procurator*.

[11] This is a reference to cases where previous to the *professio* the colonist or purchaser has become bankrupt. In such cases the purchaser of the bankrupt's property or the receiver or the administrator of his estate or a purchaser from any of these may make the *professio*.

[12] If *professio* is not made, the land is not confirmed either to a colonist or a purchaser.

[13] If a purchaser finds that his land has already been sold in Rome, he is to be compensated with an equal amount not so sold.

[14] This and the following clauses deal with the confirmation of land to colonists. Three exceptions to such confirmation are given. The first reason for non-confirmation of land to a colonist is lost. The second

. . . . shall in such wise institute inquiry concerning the said lands, ... nor in respect to land situate in Africa, which, in accordance with the Lex Rubria, since repealed, might properly or lawfully be given to an individual, being a colonist or registered as a colonist under the said law, ... shall he 60
adjudge such land to have been given or assigned; nor in respect to land situate in Africa which in accordance with the aforesaid law might properly or lawfully be given to an individual, being a colonist or registered as a colonist, shall he, if such land exceed 200 jugera for each individual, adjudge such land to be given or 61
assigned; nor shall he adjudge a larger number of individuals to be or to have been included in the colony or colonies in Africa than the number specified as proper and lawful in accordance with the Lex Rubria, since repealed, by the triumvirs appointed to establish such colony or colonies in Africa. . . . . .

[As respecting land which has] been given or assigned, . . . 62
whatever portion of land may lawfully after due inquiry be adjudged in accordance with this law, the duovir appointed or created by this law shall adjudge to be assigned to the said 63
person or his heir; . . . . . provided that at some time after the kalends of . . . . that part of such land or ground, bought from a second party under the conditions of a private sale, at the time when the said land was sold, ... 64
and shall prove or have proved with respect to the land which he has bought, that it has been so bought, provided that neither the person himself nor his heir nor a previous owner shall have alienated such land or ground, then with respect to such land or ground, the sale of which shall be proved, the duovir shall so 65

reason is excess of the limit of 200 jugera. The third limitation is that the number of colonists is not to exceed that specified in the Lex Rubria. The Lex Rubria passed in 122 B. C. was cancelled either shortly before or shortly after the death of G. Gracchus. G. Gracchus himself had been one of the commissioners and had been absent from Rome in consequence for seventy days in the early part of 122 B.C. He is said to have made provision for 6,000 colonists, a number in excess of that allowed by the law. How many were actually settled is unknown. The words *quae fuit*, always following the mention of the Lex Rubria in this law, point of course to the fact of its having been repealed.

adjudicate[15] . . . . . he shall give or restore the [same amount of land] which the said person has bought, out of the land which has not been sold by the people in Rome.

In like manner, if the land or ground bought by any person has been sold by the people, the duovir shall restore the same amount of land or ground, to the person who shall have bought the said land, out of that land or ground in
66 Africa, which has not been sold by the people;[16] . . . . . and the land or ground so given in compensation to the person who according to this law shall be the owner thereof, shall be bought by such person for the sum of one sestertius,[17] and the said land or ground shall be private land, subject to a vectigal, as specified above in this law. If land or ground has been given or assigned to any colonist or person registered as a colonist, included within a plot or sub-plot of land, which has been or shall have been sold
67 by the people in Rome, ... whatever part of such land the duovir appointed or created by this law shall have failed securely to confirm to the said colonist, then in lieu of that land or ground the said duovir shall give in compensation to him or his heir an equal amount of land in Africa, which has not been sold by the people.[18]

[19] If land or ground belonging to the Roman people in Africa has been given or assigned to a colonist or to a person registered

[15] These clauses deal with the confirmation after *professio* of the land proved to have been bought in Rome.

[16] The lacunae are here so great that it is impossible to specify the exact conditions required in this clause for the confirmation of titles, but there is clearly reference to the possibility of the same land having been sold to two purchasers. In this case one is to be compensated with an equal amount of land not yet sold.

[17] Compensation is to be made in the form of a fictitious sale at the nominal price of one sesterce. This was no doubt in order that all this land should depend on the same title, namely, that of legitimate purchase and not on mere assignation by the duovir.

[18] If land is assigned to a colonist which has already been sold in Rome, the duovir is to adjudicate to him an equal amount of land not yet sold. In such cases compensation will be direct and no fictitious sale required.

[19] The converse case. A purchaser is to be compensated if the land bought by him has been assigned to a colonist.

as a colonist, within a plot or subplot of such ground which has 68
been sold by the people in Rome, and, if the duovir appointed or created by this law shall have failed securely to confirm any portion of such land to a person who has bought or acquired the same from the said colonist or his heir, then shall the duovir give to such person who shall be proved so to have bought or acquired the said land, or to his heir, in compensation an equal amount of land in Africa, and shall declare the said land lawfully assigned to the person so compensated.

If a magistrate shall have publicly sold in Rome to any person land in Africa which has been given or assigned to a colonist or to a person registered as a colonist, ... 69
whatever part of such land the duovir appointed or created by this law shall have failed securely to confirm to the person proved to have bought such land or to a purchaser from him, or to their several agents or heirs; then in lieu of such land the duovir shall give in compensation an equal amount of land in Africa to the person proved to have bought the same, or to a purchaser from him, or to his agents, or to his heir; and shall adjudge such land to be lawfully assigned to the person so compensated.

With respect to the price payable to the people by a pub- 70
licanus[20] who has purchased the debts due to the people from the person who has purchased or shall have purchased public land or ground in Africa . . . . . whatever of such money has

[20] These clauses deal with the payment for the land purchased at the sale in Rome. The money may be paid direct to the people by the purchaser within a certain date (v. 73). If this is not done, the purchaser must, in a way satisfactory to the praetor, within the next 120 days, provide sureties and securities. The details as to these securities have already been given in the fragmentary verses 45 and 46. Meanwhile the *publicanus* has come in and purchased the whole debt from the State. A date is then fixed, apparently the Ides of March next but one after the passing of the law, on which the *publicanus* is to make payment to the *aerarium* (v. 70). In the interval, neither the *publicanus* nor the purchaser is to make such payment to the people (vv. 71 and 72). If the latter does so, he is not thereby relieved from his obligation to the *publicanus*, to whom alone payment from him is due. The object of these somewhat obscure clauses is to safeguard the position of the *publicanus*.

been set down or entered in the public accounts shall be paid to the people by the said publicanus after the Ides of March next following the date when the vectigalia shall first fall due after the passing of this law.

71 Whatever money is owed or shall be owed to the people from persons who have bought or shall have bought public land or ground in Africa, in respect of such land or ground, shall be exacted from the said purchasers after the said Ides of March by the publicanus who has purchased the said debts from the people . . . . . and no person shall exact payment of the said money on an earlier day or in other manner than is prescribed in this law; nor in respect to any money received on an earlier day than so prescribed by this law shall the person owing money to the people be absolved on account of such money by making due payment to the publicanus who has purchased the debt from the people, ... and no

72 magistrate or promagistrate by his action, and no senator by his decree, shall cause any money which is or shall be owed to the people for the above-mentioned lands, grounds or buildings, to be paid in other manner than is prescribed in this law.

73 [21] The person who has bought or shall have bought public land or ground in Africa . . . . . if such money owed in respect of said matters to the people shall not be paid within the . . . . . days next following after the said land or ground has been or shall be sold by the people in Rome, such person in respect of the said land or ground shall within the 120 days next following duly register securities for the above-mentioned sum of money, at the discretion of the praetor urbanus.

74 The praetor urbanus . . . . . unless before that time security to the State in respect of the said land or ground shall be forthcoming, or a surety to the State provided, shall sell for ready money [22] all the said land or ground, for which at

[21] A more suitable place for these clauses would seem to have been between verses 69 and 70, i. e. before the clauses dealing with the rights of the *publicani*.

[22] If the purchaser has failed to furnish securities within the 120 days, the land is to be taken away from him and sold a second time by the praetor for ready money. In a case of this kind the *publicanus* would not come in.

the discretion of the said praetor satisfactory security has not been registered.

. . . . . .

As respecting land or ground in Africa which has or shall 75
have been sold by the people in Rome, if any portion of such land has been given or assigned by decree of the Senate to the free communities in Africa,[23] whether to those which in the last Punic war remained in the friendship of the Roman people or to those which in the said war deserted to a general of the Roman people, ... then in lieu of such land, so made 76
the property of a Roman citizen, provided that other land instead thereof has not in accordance with this law been granted, restored or given in compensation to the said Roman citizen, the duovir, appointed or created by this law shall, within . . . days of his appointment, cause land or ground of the same 77
amount to be given or assigned to the said free community or to the said deserters. . . . . .

Inasmuch as the decemvirs, appointed or created in accordance with the Lex Livia, gave or assigned certain land in Africa to 78
those persons who are bound to pay a stipendium to the Roman people,[24] if any portion of such land does or shall properly belong to a Roman citizen in accordance with this law, the duovir, appointed or created by this law, within 150 days of

[23] The general sense is quite clear, but owing to the lacunae, it is impossible to follow the exact grammatical construction, and I have been obliged to render freely. The two classes of *liberei populi* are:

1. The seven faithful towns, Utica, Thapsus, &c., see verse 79:

2. Settlements of deserters from the enemy, especially Himilco and his followers, as mentioned in Livy's Epitome 50. If land has been sold to a Roman citizen, belonging to one of these seven free cities or to the deserters, these communities are to be compensated by an equal amount of land.

[24] The date of this Lex Livia cannot be proved, but must certainly belong to the period immediately after the third Punic war. The people described as *stipendiarii* were those who had opposed Rome in the war and their land became *ager publicus*, but portions of it were, by the decemvirs alluded to, left in the possession of these communities on payment of a *stipendium* to Rome. It was therefore one category of public land in Africa. This clause carefully safeguards the rights of these communities in relation to the land so allowed them.

his appointment shall . . . . . and shall give or assign to such stipendiarii, out of the public land in Africa belonging to the Roman people, the same amount of land as that included in the 'ager stipendiarius', which according to this law does or shall properly belong to a Roman citizen; and he shall cause such land to be entered in the public schedules, in such manner as shall seem to him consistent with the advantage and good faith of the Roman people.

[25]As respecting all land in Africa, with the exception of the lands
79 hereinafter mentioned, that is to say: (1) land or ground, given or assigned, in accordance with the Lex Rubria,[26] since repealed, to a colonist or person registered as a colonist, ... such land not having been replaced by or exchanged for other land; (2) land included within the territories of the free communities,[27] Utica,
80 Hadrumetum, Tampsus, Leptis, Aquilla, Usalis, Teudalis, at the time when they lately entered into friendship with the Roman people; (3) land publicly given or assigned by decree of the Senate to those persons who in the last Punic war deserted to a general of the Roman people;[28] (4) land made private by this law,[29] such land or ground not having been replaced by or exchanged for other land; (5) land or ground given or assigned by the duovir in accordance with this law to stipendiarii,[30] such land having in accordance with this law been entered in the public schedules; (6) land given by P. Cornelius imperator to the children of

[25] This is an important passage as giving the different categories of land, public and private, in Africa.

[26] This is *ager privatus e jure Quiritium*, that is, the land confirmed to colonists of the Lex Rubria.

[27] The territories of the seven free cities which, like Termessus, owned their own land as *ager privatus jure peregrino.*

[28] This refers to Himilco, *praefectus* of the Carthaginian cavalry, who with 2,200 Africans deserted to Scipio. Livy (Epit. 50) says that they were praised and promised rewards at the end of the war. This passage shows what the reward was. Their land was also *ager privatus jure peregrino.*

[29] This is the land publicly sold in Rome to Roman citizens and becoming *ager privatus vectigalisque.*

[30] This is the land of the conquered cities which as usual became *ager publicus populi Romani.* This land, in the case of Africa, instead of being let out to the provincials by the censor as was done in Asia, was assigned to the members of the conquered cities *homines stipendiarii* (this phrase

King Massinissa,[31] to hold and enjoy at his discretion; (7) the 81
land or ground on which the city of Carthage formerly stood; and (8) the land assigned to the people of Utica[32] . . . . . by the decemvirs appointed or created under the Lex Livia.

In respect to all other land[33] in Africa, the duovir, appointed 82
or created by this law, shall, within 250 days after the ratification of this law by the people or plebs, take steps that those persons who in respect to such land shall be bound to pay to the people, or to a tax farmer, vectigal, tithes or fee for cattle, shall hold, possess or enjoy all land granted, rendered or given in compensation in accordance with this law, and that for all enjoyment of such land or ground subsequent to this law they shall pay to the people, or to a tax farmer, vectigal, tithes or fee for cattle . . . . . .

No persons, who in respect of land granted, confirmed or given in compensation to them in accordance with this law

implies that the cities were no longer *civitates*, so that the term *civitates stipendiariae* could not be used) on payment of a stipendium. This was originally done by the *decemviri e lege Livia* (v. 78), but the arrangement is now confirmed by the duovir. Cicero (in Verr. III. 6. 12) says 'inter Siciliam ceterasque provincias in agrorum vectigalium ratione hoc interest, quod ceteris aut impositum vectigal est certum quod stipendiarium dicitur ut Hispanis et plerisque Poenorum quasi victoriae praemium aut poena belli; aut censoria locatio constituta est, ut Asiae lege Sempronia'. See also an important passage in Appian Pun. 135.

[31] Scipio had made a delimitation between the Roman province and Numidia, but had left certain tracts of the former with the sons of Massinissa. This is now confirmed to them as public land held in usufruct. See Cic. de Leg. Agr. II. 22. 50.

[32] This was land similarly given in usufruct after the third Punic war to Utica, and perhaps, as the hiatus suggests, to other free cities.

[33] All remaining land in Africa is allowed to *possessores* as before the law. The land, however, seems to be assigned to them by a *censoria locatio* and a vectigal or *scriptura* due from it to the people was farmed out to *publicani*. This land had in great part probably belonged to cities which had been destroyed. The *possessores* might be either Roman citizens or *peregrini*. The land could at any time be resumed by the people and was neither saleable nor inheritable. The exact details of the arrangement with the *possessores* and the *publicani* are not specified in the law but they depended upon the *censoria locatio* of 115 B.C. and the consular *locatio* of 113 B.C., see verses 85 and 89. Also Appendix I.

have been wont in cases specified by the Lex Sempronia [34] to pay neither rent nor tithes nor fee for cattle shall, in respect of that land which they severally possess or enjoy, be liable in such cases to pay rent or tithes or fee, in respect of such enjoyment after the passing of this law.

83 In respect of land [35] or ground which the Roman people in accordance with this law shall let out, a Latin or a peregrinus, ... possessing such land in accordance with this law shall be liable to pay to the people or to a tax farmer, vectigal, tithe or fee for cattle in like manner as a Roman citizen holding such land or ground to whom the Roman people in accordance with this law shall lease the same.

The praetor,[36] at whose discretion in accordance with this law,
84 in respect of land sold by the people in Rome, securities have been accepted . . . ., in case of non-payment shall, without the consent of the debtor, accept securities for the said debtor for three times the amount, and shall see that the said securities are satisfactorily registered by such purchaser, nor shall any act be done whereby any person at will shall be prevented from registering such security, or from paying the money, or from becoming surety in accordance with this law.

85 In respect to persons possessing land, ground or buildings in

[34] This probably refers to cases where owing to the presence of an enemy, or storms or floods or fire, the *publicani* cannot get the *vectigal* paid. Remission in such cases had originally depended on the Senate, but the *Lex Sempronia de rectigalibus Asiae* seems to have definitely provided for remission in these cases and such a rule would naturally be applied beyond the province of Asia.

[35] This clause clearly implies that this land could be *locatus* to other than Roman citizens. On the importance of this verse in connexion with the *agri locatio*, see Appendix I.

[36] This clause is clearly out of its place and should follow after verses 73 and 74. It is to protect the *publicanus* who has paid the purchase money to the State but has not received payment from the purchaser or his securities. In such cases the praetor, without consulting the debtor, 'invito eo quei dabit' is to accept security for three times the amount from any one who chooses to furnish it. If these securities do not pay the *publicanus* he may no doubt have recourse to a *missio in possessionem* against them, while they would have the usual legal process for three times the amount against the original debtor.

Africa, such land or ground not having belonged to the free communities or to the deserters, whatever amount of vectigal, tithe or fee for cattle in respect of such land, building or ground the said persons were liable to pay to a publicanus in accordance with the lease conditions[37] for the land, ground or buildings, or for the usufruct, lease or sale of the public revenues, determined by the censors L. Caecilius and Gn. Domitius, the said persons possessing land, ground or building in Africa after the passing 86
of this law shall be liable to pay to a publicanus the same amount of vectigal, tithe or fee for cattle; nor shall they be liable to pay more, or in other place, or in other manner, or to graze cattle on the said land in other manner or under other conditions.

As respecting the public revenues in Africa belonging to the 87
Roman people, of which the usufruct was leased or sold by the censors L. Caecilius and Gn. Domitius, whatever magistrate shall after the passing of this law sell or lease such revenues, it is not the intention of this law to prevent him from laying down such contract conditions as to render the tax farmer liable to a larger payment to the people.[38]

No magistrate or promagistrate,[39] or official vested with imperium or judicial competence, ... who shall lease or sell 88
the usufruct of the public revenues of the Roman people in

[37] *Vectigal*, *decumae* and *scriptura* are to be determined by the contract conditions, that is, the *lex* of the *censoria locatio* of 115 B.C. It seems clear that there was a double *locatio*, a *locatio* of the land to the possessor—the *lex agri aedificii loci*—by which the rent payable by the possessor was determined; and the *locatio* of the *vectigalia* to the *publicani*—*lex vectigalibus publiceis fruendeis locandeis vendendeis*—by which their payments to the people were determined. This clause makes the *vectigal* of the possessor practically a fixed rent for the future, since it is not to exceed the amount fixed by the censors of 115 B.C.

[38] That is, a future magistrate may exact a higher price from the *publicanus*. As the sale of the *vectigalia* was an auction, this was inevitable, but it seems to put the *publicanus* at some disadvantage as compared with the possessor, whose *vectigal* was not to be increased or only by another agrarian law.

[39] The magistrate or promagistrate would be the censor or any person acting for him. The *locatio vectigalium* in years when there were no censors was within the competence of the consuls. The clause declares

Africa, shall insert any contract conditions for such rents to a tax farmer, whereby without the consent of the possessors of the said land he shall be entitled to perform any acts . . . . . [against the possessor] . . . . . not permitted in the conditions laid down by the censors L. Caecilius and Gn. Domitius, when they leased or sold the rents of the said lands, ... and no condition in respect to the fee for cattle grazed on the said lands
89 shall be inserted, whereby, without the consent of the possessors, cattle shall be grazed thereon under terms other than those allowed by the conditions laid down by the censors L. Caecilius and Gn. Domitius, ...

As respecting the usufruct of revenues in Africa sold or leased by Gn. Papirius [40] the consul, it is not the intention of this law to prevent such rents from being and remaining subject to the conditions which the said Gn. Papirius the consul laid down for the sale and lease of such rents.

As respecting land in Africa, ... all roads within the said land which existed before the capture of Carthage shall remain
90 public, and also the side roads between the plots of ground . . . . . .

If any person to whom land in Africa has been assigned shall make declaration of the said land [41] before the duovir, under some category of land other than that under which the declaration should properly have been made, then the said duovir, appointed or created by this law, shall neither give nor confirm nor adjudge such land.

91 If any person shall give information on the said matter, then the magistrate adjudicating on the same shall give or assign

that no greater privileges are to be given to the *publicani* either in respect to arable or pastoral land than were allowed by the Lex Censoria of 115 B.C.

[40] Gn. Papirius was consul in 113 B.C. In what way the *locatio* of Gn. Papirius supplemented that of 115 B.C. we do not know. It is clear that this *consularis locatio* affected the *publicani* only and did not touch the position of the possessor as determined in verse 85.

[41] This proves that in the case of this land, as in that of the land bought or confirmed to colonists, *professio* before the duovir might, in certain cases, be made. Apparently some greater security of tenure was the result of such *professio*, but the details are obscure.

. . . . . part [of the said land] to the said person, through whose information such claimant has been convicted of wrongful declaration.

In the case of all persons whose professio [42] has been duly made, it shall be lawful for the same to hold, possess and enjoy their former possessions, as also the land assigned them by the people, ... in lieu of any portion of the said land, given or assigned by the people, which has already been sold by the people, the magistrate shall grant in compensa- 92
tion an equal amount of land belonging to the Roman people in Africa which has not been so sold by the people.

No person holding, possessing, or enjoying land or ground in Africa, or any building on such land or ground, shall be liable [43] to pay fee for cattle or rent in respect of any portion of such 93
land or ground, or any such building, which the quaestor or praetor [44] has publicly sold, ... the said land has been given or assigned by decree of the Senate, the above-mentioned lands and possessions shall all [belong to] those persons, ... provided that the magistrate to whose 94
court application shall be made shall give judgement in such manner as is specified concerning such matter in this law, nor shall . . . . . [the persons] to whom in accordance with this law land or ground has been granted, confirmed, given in compensation or assigned, convey [the corn] [45] . . . . .

[42] This clause clearly refers only to those possessors, and possibly they were a minority, who had made the *professio* before the duovir. In their case either the *possessio* of the land is secured, or, if the land is taken away in order to be sold, other land is given in compensation. The ordinary possessors, who have made no *professio*, seem to have had no security of tenure whatever.

[43] No possessor deprived of his land and not compensated with other land is liable for any *vectigal* or *scriptura*. The building—*superficium*—is either a farm-house or shepherd's hut. It appears from this passage and from verse 85 that a special rent for such buildings was exacted.

[44] These sales of land belong to the quaestor in the first instance, but where no securities have been given within the proper time the land was sold a second time by the praetor (see verse 74).

[45] This clause is too fragmentary to make anything out of. There

a Roman citizen such land or ground . . . . . in respect to any fruits growing in the said land or ground, or any wine or oil produced in the same, and respecting the harvest or vintage to be gathered in, in the consulship of P. Cornelius and L. Calpurnius,[46] or subsequently . . . . . the said fruits . . . . .

SECTION III: ON THE CORINTHIAN LAND

The duovir appointed or created in accordance with this law shall within . . . . days next following his appointment, ... the land or ground which belonged to the people of Corinth[47] . . . . . excluding that land, or ground . . . . shall see that the land or ground which is to be sold in accordance with this law, be measured out and boundary marks set up, ... the said land . . . . . and shall lease out the work, and specify a day, by which such work shall be completed; and shall cause . . . . whatever portion of the said land, ground or building, has been sold to any person, the said person . . . . . of such money, ... the purchaser, his securities and sureties shall not thereby be free from liability, and the quaestor who has the aerarium for his province, shall have the names of such purchasers and sureties entered in the

may be a reference to conveying the *decumae* of corn and possibly to some payment in kind, wine or oil, to the Roman people.

[46] Consuls in 111 B.C. The vintage of this year is spoken of as future, which seems to fix the date of the law to the earlier half of 111 B.C. It seems probable that most if not all of the land both in Africa and Corinth which as the result of this law was sold to Roman citizens and became *ager privatus vectigalisque*, had up to this time belonged to this last category of public land, assigned to individual possessors by a *censoria locatio*. We know from Cicero that these *praedia Africana* were to have been included under the public lands to be sold in accordance with the scheme of Servilius Rullus in 63 B.C.

[47] 97–105. Nothing of course can be made out of these fragments about the Corinthian land, except that the greater portion of it was to have been sold, under conditions similar to those specified for the sale of land in Africa.

public schedules, ... exaction shall be made from themselves and their heirs. 101

As respecting the land, ground or building 102
shall be adjudged to pay to the people. The praetor or propraetor to whose court application shall be made 103
. . . . . shall have been sold . . . . . .
. . . . . possessions 104
. . . . . .
. 105

APPENDIX I

ON LOCATIO AGRI

The land in Africa dealt with in verses 78 to 96 is what Mommsen describes as *ager publicus a censoribus locari solitus*. It is a question, however, whether in this and in other cases where *locatio* seems to refer to the leasing out of land, the *censoria locatio* was really a contract between the censors, as representing the Roman people, and the possessors, as *conductores* of the land, and not rather a contract between the censors and the *publicani*, who bought or hired the right of collecting the *vectigalia* payable on the land. It may of course turn out, and I believe the present law favours the view, that in certain provinces the *locatio* comprised both contracts, which were to some extent limited by one another. At any rate, Niebuhr, who though opposed by Bekker is still not without his supporters, held that no land, whether the *ager Campanus* or any other, was ever let out on lease, but only the right to collect revenue from the land. The question, as far as it relates to Italy or provinces other than Africa, is only remotely and indirectly involved in the understanding of this law, and I am not prepared here to do more than note the following points, which seem to me prima facie objections to this view.

(1) Cicero in Verr. III. 6. 12 is distinguishing the various forms which the *ratio agrorum vectigalium* may take, and the *censoria locatio*, spoken of as established in Asia by the Lex Sempronia, seems to apply at least as much to the *agri* themselves as to the *vectigalia*.

(2) Appian in I. 7, speaking of one category of *ager publicus*, distinctly says, τῆς δὲ γῆς . . . . τὴν μὲν . . . ἐξεμίσθουν, clearly making the *locatio* refer to the land.

(3) In the Lex Agr. 21, we have *quem agrum . . . censores . . . locaverunt*. Coming, as it does, in a legal document, the phrase seems to carry special weight.

(4) We have in Verr. III. 6. 13 the statement *is ager a censoribus locari solet.* All these passages, though some of them are perhaps ambiguous, seem in favour of the view that land could be let on lease, and that the possessors and not only the *publicani* could be called its *conductores.*

I would add (5) the phrase *agrum conductum habere* in Lex Agr. v. 32 which, as it is certainly used of the possessor, and not of the *publicanus,* seems decisive against Niebuhr's position.[1]

No doubt there is one passage (Cic. ad Att. I. 17. 9) which seems to favour Niebuhr's position. Referring undoubtedly to the *publicani*, Cicero says, *Asiam qui de censoribus conduxerunt questi sunt in senatu*, &c.; here *conducere Asiam* must mean to take on lease the *vectigalia* of Asia, and it may be argued therefore that the phrase of Fronto (ep. ad Verr., p. 125), *jam G. Gracchus Asiam locabat*, must be explained in the same way. But the phrase is at least as ambiguous as those I have quoted on the other side. It may well be regarded as a conversational, almost slangy phrase, perfectly intelligible in its context, but not strictly accurate. But there is one passage where the phrase *Asiam locare* occurs in an official document, and therefore in its precise legal sense, which in my opinion goes a long way towards making Niebuhr's position untenable. In the S. C. de Asclepiade (Bruns, p. 171) we have *magistratus nostri queiquomque Asiam Euboeam locabunt vectigalve Asiae Euboeae imponent.* Now the date of this S. C. is 78 B. C., the year of Sulla's death. It therefore falls within the interval during which the *locatio vectigalium* and the *publicani* system in Asia were abolished by Sulla. It seems quite impossible therefore that, during the time when there was no *locatio vectigalium* in Asia, that *Asiam locare* can have the meaning assigned to it by Niebuhr and his supporters.

If therefore it does not and cannot mean 'to lease out the

[1] Of course neither State creditors nor Italian communities could be said *agrum conductum habere.* But these clauses refer also to individual tenures of land by *coloni* and *municipes*, or persons accounted as such, and some of these must have been in the position of *conductores* of *ager publicus.*

rectigalia of Asia', it can surely only mean 'to lease out the public land in Asia', this being of course unaffected by Sulla's measure.[2]

With regard to the land in Africa, formerly belonging to the *subactae civitates*, and therefore, as Cicero says of similar land in Sicily, *a censoribus locari solitus*, we should have on Niebuhr's view to hold that there was no contract between the possessor and the State, in other words, no *locatio* of the land to the possessor, and a corollary from this would be that what the possessor is to pay is determined for him by what the *publicanus* has bought the right to receive.

This view is contrary to the evidence of the law, as I understand it.

In the first place, verse 83 deals with land *quem populus Romanus ex h. lege locabit*, and enacts that Latin or other non-Roman possessors are to pay *populo aut publicano* the same *vectigal* as a Roman citizen to whom *populus locabit*. Surely in this case the *vectigal* depends on the *locatio* to the possessor, and might be paid direct to the people without the intervention of a *publicanus* at all. If the *publicanus* does come in, as of course he would, what he has the right to collect will depend on the *vectigal* paid by the possessor, and not vice versa.

In the second place, we get the same conclusion, perhaps even more clearly, in verse 85. Here it is enacted that possessors are in future to pay as *rectigal* for the land, the amount fixed in the censorship of 115 B.C. *ex lege dicta quam L. Caecilius Gn. Domitius censores agri aedificii loci vectigalibusve publiceis fruendeis locandeis vendendeis legem deixerunt*; i.e. by the terms of the *locatio* of the land to the possessor, or the *locatio* of the *vectigalia* to the *publicanus*.[3] The two are clearly distinct, and it is the

[2] See Mommsen, *Rom. Hist.*, vol. iii, p. 358. On the doubt thrown by Mr. Strachan Davidson on Mommsen's view, see Appendix II.

[3] Since writing the above, I am confirmed in this interpretation of the clause by seeing what had escaped my notice, Mommsen's note. He says: 'distinguitur *lex agri aedificii loci*, id est quam possessori censores deixerunt, ab lege *vectigalibus publiceis fruendeis locandeis vendendeis* dicta, id est quam censores deixerunt publicano' (Juristische Schriften, vol. i, p. 144). To avoid the inference drawn above from the word *ve*, it

former which is primarily to decide the *rectigal* paid by the possessor.

In the third place, we find from verse 86 that this *rectigal* paid by the possessor is to be virtually a fixed rent, to be increased, if at all, not by future censors, but by a new agrarian law. On the other hand, verse 87 allows future censors to exact a larger payment from the *publicani*. In other words, while the terms of the *agri locatio* are fixed, those of the *rectigalium locatio* are liable to modification.

In the fourth place, we have in these clauses of the law the advantage of precise and technical legal terminology. When Cicero speaks of a *censoria locatio agrorum rectigalium*, or Appian says that the people let out land, it may be argued that these were inexact expressions, and that really only the *vectigalia* were let out. But the wording of the law is precise. When it speaks of the *locatio* of the *vectigalia*, it says: *magistratus . . . queiquomque . . . publica populi Romani in Africa . . . vectigalia fruenda locabit.* When it speaks of the *locatio* of land, it says: *quem agrum . . . populus Romanus locabit* (cf. v. 77 with v. 83).

It seems to me, therefore, that there was a *locatio agri* to the possessor, and that there was in a sense a contract between him and the State. But prior at any rate to this law, it seems to have amounted to very little. It fixed the rent, but a new *locatio*, either by the next censors or by an intervening consul, could always raise it. It clearly gave no security of tenure, for, as Mommsen points out, the land in Africa publicly sold in Rome must have previously belonged to this category of land, and have been resumed from the possessors. In fact this African *possessio* seems to have been as precarious as the Italian, and perhaps the only difference was that here the rent was periodi-

has been argued that *re* is ambiguous and may only imply two different ways of describing the same transaction, as e.g. in the phrase *lex plebeive scitum*, or in *Asiam . . . locabunt rectigalve Asiae . . . imponent* in the S. C. de Asclep. The former example I do not think is a parallel case, and if the view I have taken on pages 87 and 88 of the clause in the S. C. is correct, it only confirms what I think is the force of *re* in the present passage.

cally determined by a *locatio*, in Italy by the customary dues mentioned by Appian.

But this 'reactionary' law seems to have done not a little even for the African possessor. It not only confirmed for him exemption from rent in certain cases, as prescribed by the Lex Sempronia (v. 82), but it gave him, as we have seen, what was virtually a fixed rent.

It did not, it is true, give him real security of tenure, and it did not allow him to sell or dispose of his land by testament. But it appears from the somewhat mutilated verses 90 and 91 that in certain cases at any rate *professio* of the land might be made before the duovir, and that where such *professio* was made and accepted—*quibuscum transactum est*—the land was in some way and to some extent secured, *utei . . . agrum, quei eis publice adsignatus esset, haberent possiderent fruerentur*, or, if sold by the people, was replaced by other land (v. 91). At the worst, if the land was taken away without any compensation, the possessor was at any rate protected from the moment of losing his land from any further demand on the part of the *publicanus* (v. 92). Of course even in the more favoured cases, the possessors of these *praedia Africana* would have no claims against the State which Cicero could urge against the proposal of Rullus. Their rights, such as they were, were given by one agrarian law, and could therefore be taken away by another.[4]

[4] Mr. Strachan Davidson furnished me with a valuable note, summing up his interpretation of these clauses thus:—(1) There was no contract between the possessor and the State. (2) What the possessor is to pay is determined for him by what the *publicanus* has bought the right to collect. (3) Future censors may make the terms more onerous against the *publicani*. (4) Apart from these clauses of the law the censors might alter the conditions of sale to the *publicani* so as to enable them to get more out of the possessor (cf. Cic. in Verr. III. 7. 18, and III. 8. 19). (5) But as the result of these clauses, the conditions laid down by the late censors to the *publicani* are stereotyped. (6) This gives the possessor practically a fixed rent until another agrarian law comes round. (7) He has no contract against the *populus Romanus*, or Cicero would certainly have urged it in his speech against Rullus.

It will be apparent how much I am indebted to this note, although I am unable to accept the first two points.

APPENDIX II

SULLA AND THE TAX FARMING OF ASIA

The force of my argument drawn from the S. C. de Asclepiade (pp. 87 and 88) would of course be weakened if Mr. Strachan Davidson is right in rejecting Mommsen's view that Sulla abolished the farming of the taxes in Asia. The question bears directly upon the subject of Appendix I, because, if Sulla did abolish the *rectigalium locatio* in Asia, the clause in the S. C. de Asclep. proves beyond doubt that there was a *locatio Asiae* distinct from the *locatio rectigalium Asiae*. As it is also a question of some historical interest, not cleared up either by Ferrero or Heitland, I shall state my reasons for adhering to Mommsen's view. Appian (Mithr. 62) makes Sulla say in a meeting at Ephesus in 84 B.C. that he orders the immediate prepayment of five years' φόρος and also of a war indemnity to himself, fixing a day for both payments. He also says that he will apportion the payments, clearly both of them, among the various cities. Whether the 20,000 talents mentioned by Plutarch, Lucull. 20 and Sull. 25, is only the war indemnity or includes the five years' *rectigal*, is here immaterial. What I wish to emphasize is, that this immediate demand for five years' *rectigal* according to a new apportionment is inconsistent alike with the fluctuating *decumae*, and with the farming of the *rectigal* to the *publicani*. It necessarily implies, as it seems to me, a fixed tribute and its direct payment and collection by the Greek communities. Again, entirely in accordance with this view that the *rectigal* was now a matter directly between the Roman Government and the communities, the cost of ships required by Rome was a few years later deducted in the case of Miletus and other cities *pro parte sua*, from the *rectigal* payable to the Roman people (Verr. II. 1. 35. 89). Such an arrangement absolutely ignores the *publicani*.

In the next place, we have the important passage in Cicero's

letter to his brother when governor of Asia (Ad Quint. frat. I. 1. 33): 'Nomen autem publicani aspernari non possunt, qui pendere ipsi vectigal sine publicano non potuerint, quod eis aequaliter Sulla discripserat. Non esse autem leniores in exigendis vectigalibus Graecos, quam nostros publicanos, hinc intellegi potest, quod Caunii nuper omnesque ex insulis, quae erant a Sulla Rhodiis attributae, confugerunt ad senatum, nobis ut potius vectigal quam Rhodiis penderent. Quare nomen publicani neque ii debent horrere qui semper vectigales fuerunt, neque ii aspernari, qui per se pendere vectigal non potuerunt, neque ii recusare qui postulaverunt . . . . . possunt in pactionibus faciendis non legem spectare censoriam, sed potius commoditatem conficiendi negotii et liberationem molestiae.'

I have quoted the passage in full because I believe that, taken as a whole, it disproves Mr. Strachan Davidson's interpretation of the first sentence. In his note to App. I. 102, he believes that the *rectigal* in the passage above is the forced contribution of Appian and the 20,000 talents of Plutarch, and that what Cicero states is that the Greeks were not able to pay the money without borrowing from Roman *publicani*. That they did borrow from *publicani* for this purpose he thinks is quite clear from Plutarch, Lucull. 20. Now although *rectigal* might conceivably be used for a war indemnity, it much more properly means the regular taxation, and I have no doubt that it refers to the five years' *rectigal* demanded by Sulla, and to which his apportionment (*aequaliter discripserat*) applied as much as to the indemnity. Cicero is, in fact, in the whole passage talking to his brother about the relations between *publicani* and provincials in connexion with the regular *rectigal* (cf. the phrase, *semper rectigales*), and there seems no reason why he should bring in the war indemnity at all. A reference, too, to Plut. Luc. 20 shows, what we should have expected, that the Asiatics did not borrow from the *publicani*, but from the capitalist money-lenders (δανεισταί). The word τελῶναι is only used once in the chapter, and not in connexion with the indemnity. They are distinguished from the δανεισταί, who in what follows are clearly the persons lending the money. *Sine publicano* does not mean therefore 'without borrowing from *publicani*'. To express

that meaning we should surely have had *sine publicanis*. It does mean 'without the aid of the *publicani* system'. The Greeks with their unmethodical business habits found it impossible to raise the five years' *vectigal* without the *publicani* system of collection. Cicero is quite clear in what follows as to the advantages derived by the Greeks from the system; it provided *commoditatem conficiendi negotii et liberationem molestiae*. It was the absence of the former which made them unable *pendere vectigal*. But the abolition of the *publicani* and its disadvantages are clearly alluded to in the second sentence of the quotation. The Greeks, though less methodical, perhaps because less methodical, were even harsher in exacting the *vectigal* than 'our *publicani*', a point which Cicero illustrates from the request of the Caunii. But the particular example, taken from a more recent time (*nuper*), is clearly suggested to Cicero by the experiences of the Sullan régime. This is how I interpret the passage. It seems to point to exactly the same conclusion as the two other passages to which I have referred. The abolition of the *locatio vectigalium* was no doubt cancelled by 70 B.C., and may have been by 74 B.C., when Plutarch (Luc. 20) describes the province as ὑπὸ τῶν τελωνων καὶ τῶν δανειστῶν πορθουμένην. But Cicero is not, as Mr. Strachan Davidson implies, speaking of the present state of the province in Verr. III. 6. 12. He merely cites the *censoria locatio* of Gracchus as a method of dealing with *agri vectigales* different from that adopted in Sicily. The present arrangement in Asia, whatever it was, was quite irrelevant to his argument. What I am concerned with is this. If Sulla did make the change, as I have tried to show that he probably did, it was certainly not cancelled as early as 78 B.C., the year of Sulla's death, and therefore my argument in Appendix I as to the meaning of *Asiae locatio* will hold good.

LEX ANTONIA DE TERMESSIBUS MAJORIBUS

This inscription, forming probably less than one-third of the whole law, was found in Rome in the sixteenth century. When discovered the fragment was fairly legible, and a copy made at the time was edited by Manutius. It is now much less decipherable, and is preserved in the Naples Museum.

The date of the law is proved by internal evidence to have been between 72 and 70 B. C. The consuls of the former year are mentioned in Cl. I, and the phrase in the *praescriptio*, *de senatus sententia*, shows that the Sullan restrictions upon the tribunician initiative had not yet been removed by the Pompeian law of 70 B.C.

Termessus Major was a town in Pisidia, and had therefore been included since about 100 B. C. in the province which was at first somewhat vaguely called Cilicia. Nearly a century before this, however, we find Termessus alluded to in the course of the campaigns conducted in Asia Minor by Gn. Manlius, the consul of 189 B. C. After some hostile operations against the town, Livy says that Manlius granted it terms of peace, Polybius that he admitted it to friendship. Both add that these terms were bought for the sum of fifty talents (Livy XXXVIII. 15; Pol. XXI. 35). Whether, as a result of this, any sort of relationship between Rome and Termessus was kept up appears very doubtful. It is certainly not the case that Termessus, standing as it did outside the Roman Empire, was from this time a *libera civitas* in the technical sense. On the contrary, it seems pretty clear from the way in which the consulship of 91 B. C. is mentioned in Cl. II, that this was the year in which autonomy or *libertas* was first conferred. This grant is no doubt to be brought into connexion with services of some kind, positive or negative, received or hoped for in the Mithridatic wars. The present law confirms the town in the privileges it had enjoyed since 91 B. C.

Termessus was one of the privileged provincial towns, called *civitates liberae*, or *liberae et immunes*. These towns stood in a way intermediate between the *civitates foederatae* above them and the *civitates stipendiariae* below them. But it would correspond more closely with their true position to class them with the former as contrasted with the latter. For, as far as actual privilege was concerned, the *civitates foederatae* and *liberae* were very much on the same footing. But while in the one case the privileged position was guaranteed by a solemn *foedus*, sworn to by both contracting States, and could therefore only be taken away on the outbreak of actual hostilities, in the other case it was merely conferred by a law passed in the *comitia*, or by decree of the Senate. In both these last cases the grant could be at any time revoked. Both classes were, in a modified sense, sovereign States, recognizing however the suzerainty of Rome (*majestatem populi Romani comiter habere*) and always bound by her foreign policy (*ut eosdem quos populus Romanus amicos atque inimicos haberent*). Strictly, all these communities were *extra provinciam*, or independent of the governor's control or interference. They had the right *suis legibus et judiciis uti*. How far this autonomy would be actually left to these communities would depend, partly upon local conditions, partly upon the character of the governors. Cicero boasts that the free towns in Cilicia, of which Termessus was one, did use their own laws and courts, and did enjoy *αὐτονομία*. On the other hand, in such a province as Achaia the *libertas* of the free towns can have been little more than a name.

Both *foederatae* and *liberae civitates* were more common in the eastern than in the western provinces, and in the older than in the more recently acquired. The privileged position was almost always a reward for loyalty in war, and no doubt many of these States passed through the same vicissitudes which Tacitus describes in the case of Rhodes. 'Reddita Rhodiis libertas, adempta saepe aut firmata, prout bellis externis meruerant aut domi seditione deliquerant' (Ann. XII. 58). If this was the career of a *civitas foederata* like Rhodes, it is obvious how precarious must have been the position of the *liberae civitates*, whose rights might be cancelled by a law or *senatus consultum*. Among

the *foederatae civitates* in the eastern half of the Empire were Athens, Rhodes, Amisus, Tyre, and Sagalassus in Pisidia. The *liberae civitates* were naturally more numerous, and included such towns as Chios, Smyrna, Eruthrae, for services against King Antiochus; Cyzicus, Magnesia, Laodicea, Ephesus, Termessus, in the course of the Mithridatic wars; Alexandria Troas, as Rome's traditional mother city, and many towns freed by Pompey and later by Caesar. To these may be added a considerable number of the historic cities in Achaia, and the seven loyal cities in Africa, already alluded to in the Lex Agraria.

The privileges of these *liberae civitates* may be enumerated as follows:—

(1) The enjoyment of their own constitutions, laws and customs, and exemption from the interference of the provincial governor in their internal affairs. This constituted them technically extra provinciam, but no doubt there were usually certain limitations laid down in the *lex* or *S. C.*, such as provision for a timocratic constitution, and the enjoyment of their own laws would always, as in the present law, be subject to the proviso, *quod advorsus hanc legem non fiat* (Cl. I).

(2) Their own jurisdiction and the retention of their own local courts, both civil and criminal.

These towns were therefore outside the provincial *conventus*; they did not have to bring cases before the tribunal of the governor at the *fora* he held throughout his province. It is probable that the status of resident Roman citizens was somehow safeguarded, and certainly no capital sentence could be pronounced on them. But it appears from the inscription in respect to Chios, quoted below, that resident Roman citizens were subject to the local courts.

The legal relations between resident Romans and the Termesses are dealt with in Cl. VI of the present law.

(3) They were dignified with the titles of *liberi socii atque amici populi Romani* (Cl. I). Of the Aedui, a *foederata civitas*, we are told by Tacitus, that they 'soli Gallorum fraternitatis nomen cum populo Romano usurpant' (Ann. XI. 25).

(4) They had their own financial management, with which the quaestor could as little interfere as the governor with their

general administration. This of course includes (Cl. II) the right of *locatio* in connexion with public lands or buildings. It was in respect to finance that the free towns proved themselves least capable of self-management. They were extravagant, got into debt, borrowed money from capitalists, and often made it inevitable that the Roman government should interfere. The free cities of Achaia were especially troublesome in this matter, and commissioners had to be sent out 'ad ordinandum statum liberarum civitatium'. The *rationes civitatium* were one of the problems which Pliny had to deal with in Bithynia.

(5) Many if not all of these *liberae civitates* had the right of imposing, collecting and using their own *portoria*, or customs dues. It was always provided, however, as in Cl. VII of this law, that no Roman tax farmers, having occasion to transport goods through the territory of these States, should be liable to pay any customs duties under them. The passage of Livy quoted below seems to show that Roman citizens and Latins were exempt in any case from these non-imperial *portoria*.

(6) The free towns were exempt from having a Roman garrison or from being compelled to open their towns as winter quarters for Roman soldiers. This exemption, however, it appears, might be overridden by special decree of the Senate (see Cl. V). We find these towns described as ἀφρούρητοι (Polyb. XVIII. 29).

(7) The cities owned their territory, and individuals their land as *ager privatus jure peregrino*. No land tax was paid to Rome, in the shape of *stipendium*, *tributum* or *vectigal*. They were also exempt from all other form of tribute or tax to the Roman government.

(8) Whatever requisitions they were liable to by the terms of the *foedus* or *lex* or *S. C.*, in the shape of ships or troops, they were to receive due payment for. This provision, however, under the ordinary governor tended to be very much a dead letter.

(9) As independent and quasi-sovereign States, these towns retained the right of coinage, and possessed the *jus exilii*, i. e. the right to receive exiles from Rome into their citizenship. It was by means of voluntary exile, and by putting off their citizenship by incorporation in one of these free States, that

the capital effects of *aquae et igni interdictio* were usually avoided.

This introduction may be appropriately concluded by three citations, which illustrate several points in the present law.

1. Livy XXXVIII 44 'senatus consultum factum est ut Ambraciensibus suae res omnes redderentur, in libertate essent ac legibus suis uterentur; portoria, quae vellent, terra marique caperent, dum eorum immunes Romani ac socii nominis Latini essent.'

2. Livy XXXIII. 32 'liberos immunes, suis legibus esse jubet Corinthios . . . . .' And Polyb. XVIII. 29 *ἀφιᾶσιν ἐλευθέρους, ἀφρουρήτους, ἀφορολογήτους, νόμοις χρωμένους τοῖς πατρίοις . . . . . Ἀχαιούς.*

3. C. I. Gr. 2222 *ἡ σύγκλητος εἰδικῶς ἐβεβαίωσεν ὅπως νόμοις τε καὶ ἔθεσι καὶ δικαίοις χρῶνται, ἃ ἔσχον ὅτε τῇ Ῥωμαίων φιλίᾳ προσῆλθον, ἵνα τε ὑπὸ μηθ' ὥτινιοῦν τύπῳ ὦσιν ἀρχόντων ἢ ἀνταρχόντων, οἵ τε παρ' αὐτοῖς ὄντες Ῥωμαῖοι τοῖς Χείων ὑπακούωσιν νόμοις.*

Termessus is styled *ἐλευθέρα* on several extant coins.

LEX ANTONIA DE TERMESSIBUS

OF ABOUT 71 B.C.

CONCERNING THE PEOPLE OF GREATER TERMESSUS IN PISIDIA.

G. Antonius, son of Marcus, Gn. Cornelius, G. Fundanius, son of Gaius, tribunes of the plebs, in accordance with a decree of the Senate,[1] duly proposed to the plebs, and the plebs duly decreed; . . . . . the . . . . . tribe voted first; the first tribesman to vote was . . . . . .

I. All persons who were citizens of Greater Termessus in I
Pisidia, or who by the laws of the said community were made citizens previous to the kalends of April in the consulship of L. Gellius and Gn. Lentulus,[2] and their children, and their posterity, being citizens of Greater Termessus in Pisidia, shall be the free allies and friends of the Roman people, and shall enjoy their own laws; and it shall hereby be lawful for the said persons, being citizens of Greater Termessus in Pisidia, to enjoy their own laws in such manner as shall not be contrary to this law.

II. All lands, all grounds and buildings, public or private, included within the territory of the people of greater Termessus in Pisidia, in the consulship of L. Marcius and Sex. Julius,[3]

[1] *De senatus sententia.* This is in accordance with Sulla's restriction on the tribunician initiative *μηδὲν ἀπροβούλευτον ἐς τὸν δῆμον ἐσφέρεσθαι*, App. I. 59. This was cancelled by Pompey and Crassus in 70 B. C.

[2] This consulship, 72 B. C., together with the words *de senatus sententia* fix the date of this law to between 72 and 70 B. C.

[3] This consulship was 91 B. C., when autonomy was first granted to Termessus as a reward for its fidelity in the Mithridatic war. The autonomy then granted is confirmed by the present law. Cf. Livy XXXVIII. 15, from which it appears that there had been fighting in Pisidia in 191 B. C. and that Cn. Manlius, after compelling the people of Termessus to raise the siege of another town, granted them peace on payment of fifty talents. Wordsworth is wrong, I think, in supposing that autonomy was granted on this occasion.

and all building blocks belonging to them under the above-mentioned consuls, and every portion of the aforesaid, which the said people under the said consuls held, possessed, used or enjoyed, such properties not already having been leased out, the said people shall hold and possess as aforetime; and if any portion of the said lands, grounds or buildings have been leased out, notwithstanding the legal prohibition of such leasing out enacted in the consulship of L. Gellius and Gn. Lentulus, the people of Greater Termessus in Pisidia shall nevertheless hold, possess, use and enjoy all such grounds, lands and buildings as they held, possessed, used and enjoyed the same previous to the first Mithridatic war.

III. As regards possessions of the people of Greater Termessus in Pisidia, public or private, other than grounds, lands, or buildings already leased out, which belong or belonged to the said people previous to the first Mithridatic war, and whatever part of such possessions they formerly held, possessed, used, or enjoyed, such possessions not having been alienated by themselves of their own free will, shall belong to the people of Greater Termessus in Pisidia as aforetime; and it shall be lawful for the said people in such manner to hold, possess, use, and enjoy the same.

IV. Respecting free men or slaves lost by the people of
II Greater Termessus in Pisidia in the Mithridatic war, the magistrate or promagistrate, to whom jurisdiction in such matter shall belong, and to whose court application shall be made, shall adjudicate on the said matter, and shall grant a court and recuperatores, whereby the said people may recover the same.

V. No magistrate or promagistrate or legate or any other person shall introduce soldiers into the town or land of the people of Greater Termessus in Pisidia for the object of winter billeting, or shall allow another so to introduce them, or shall cause soldiers to be billeted in the said town, unless the Senate[4]

[4] The Senate is of course not the local senate but the Senate in Rome, which, especially under the Sullan régime, had all such provincial matters under its control. How communities in a less favourable position than Termessus suffered from the billeting of soldiers upon them is evident from Cicero's letters when governor of Cilicia.

shall have expressly declared that soldiers be brought into winter quarters with the people of Greater Termessus in Pisidia; and no magistrate or promagistrate or legate or any other person shall cause or order the said people to render or furnish or be deprived of anything, save what it is or shall be incumbent on the same to render or furnish in accordance with the Lex Porcia.[5]

VI. Between Roman citizens and the people of Greater Termessus in Pisidia there shall be the same laws, the same legal rights, and the same customs as existed in the consulship of L. Marcius and Sex. Julius; and whatever rights, under the aforesaid consuls, the people of Greater Termessus in Pisidia possessed in respect severally of grounds, lands, buildings, and towns, such grounds, lands, buildings, or towns not having been alienated by the said people of their own free will, the same rights shall remain to the said people in respect of the aforesaid grounds, lands, buildings, and towns; and it is not intended by this law that the matters specified in this clause shall be otherwise than they now are.

VII. Whatever terms for the collection of customs dues,[6] whether inland or maritime, within their own territories, the people of Greater Termessus in Pisidia may have laid down, the same terms for the collection of such dues shall continue; provided that no customs duty be collected from those persons who have bought the public revenues of the Roman people; in respect of produce from such revenues transported by tax farmers through their territory the people of Greater Termessus in Pisidia shall claim or collect no customs duty.

[5] Lex Porcia. A reference to this law of the elder Cato is found in Livy XXXII. 27 'Sumptus, quos in cultum praetorum socii facere soliti erant circumcisi aut sublati'. Livy mentions the law in connexion with Sardinia, but it was doubtless of general application.

[6] On this privilege see Introd. p. 97. The people of Termessus would of course employ their own *publicani*, on whom they would impose what conditions they chose. According to this clause, only the Roman *publicani* were exempted from these local *portoria*. According to the passage of Livy quoted in Introd. p. 98, it would seem that all Roman citizens and even Latins enjoyed a similar exemption.

LEX MUNICIPII TARENTINI

The extant portion of this law not contained in the sixth or earlier editions of Bruns is now included in the seventh edition published in 1909. It is also to be found in Mommsen's Juristische Schriften, vol. i, p. 146. The fragment, forming the ninth table of the law, was found on a brass tablet in an ancient well at Tarentum in 1894. It is now in the Museum at Naples.

Under the military supremacy of Rome in Italy, Tarentum had been a *civitas foederata*, retaining its Greek character and its Greek constitution. In 123 B.C. G. Gracchus, as we have already seen, established a maritime colony at Tarentum, called Neptunia.[1] This, however, was never thoroughly amalgamated with the Greek city, which must have retained its Greek forms of administration. After the Social war, either by the Lex Julia, if Tarentum had not joined in the war, or, as perhaps Cicero's words imply (Pro Arch. IV. 7), by the Lex Plautia-Papiria, Tarentum obtained the Roman *civitas*.

From this time the Gracchan colony and the Greek *civitas foederata* must have been merged in one. All the inhabitants were Roman citizens, and as such necessarily adopted Roman laws. Tarentum in fact became *fundus*,[2] not only of the law which enfranchised it, but of Roman laws collectively. In a sense, too, it became at once a *municipium c. R.*

But it would seem that in the case of all the Latin communities and *civitates foederatae* enfranchised by a general law, the logical consequence was the establishment of a constitution based either upon Roman law or Roman custom. This was a logical consequence, but it by no means necessarily followed at once upon the enfranchisement. On the contrary, there is no evidence that any such completion of the enfranchisement of Italy formed part either of Sulla's administrative work or of the revived senatorial administration which followed his death.

[1] Vell. I. 15; Plin. N. H. III. 11. 99.

[2] See note on Lex Jul. Mun. v. 159.

At any rate, during the interval these communities seem to have been in a somewhat transitional condition. They were perhaps *municipia c. R.* only by courtesy, and in all probability were known as *municipia fundana*.[3]

When, after this interval, long or short, the constitution was given, it always took the form of a *lex data*. In other words, it was not embodied in a *lex rogata*, passed by the people, but was drawn up by a commissioner or commissioners, themselves of course elected and empowered by the people, the *lex data* sometimes perhaps, as in the case of a *lex provinciae*, being called after the name of its compiler. Of these *leges datae* for provincial towns, both Roman and Latin, we shall have examples in the Lex Coloniae Genetivae and the leges Salpensana and Malacitana in Spain. But in the case of Italy, the fragment of the present law is the only direct evidence we possess for the process by which the enfranchisement of 90 B.C. was completed in the following period.

There can be no doubt, however, that Mommsen is justified in bringing into connexion with this process the last clause in the Lex Julia Municipalis, in which it is enacted that, where commissioners have been empowered *dare leges* to *municipia fundana*, any corrections or additions made to such *leges datae*, within a certain date after the passing of the law, are to be recognized as valid.[4]

That there was no general municipal law, laying down the type of constitution to be adopted by Italian communities, previous to the Lex Julia Municipalis of 45 B.C. is practically certain. But it is equally clear that in the period between Sulla and Caesar a traditional and customary form of constitution was growing up, which guided the various commissioners in the *leges datae* for particular towns. That *quattuorviri* e. g. were regarded as the regular magistrates for Roman *municipia* is proved by Cicero, who, speaking of Caesar's reported intention

[3] See the last clause of the Lex. Jul. Mun., and the note *ad loc.*

[4] See Mommsen's Juristische Schriften, vol. i, p. 151 ; very likely, too, the passage in the Bell. Civ. I. 15 may refer to the same process. It is there said of Labienus, 'Cingulum oppidum constituerat,' i. e. he had drawn up its *lex data*.

to enfranchise Transpadane Gaul, says: 'eratque rumor de Transpadanis eos esse jussos quattuorviros creare' (Ad Att. V. 2. 3). To this may well be added the fact that several clauses in this short fragment of the Lex Tarentina are identical, or almost identical, with clauses in the Lex Coloniae Genetivae, belonging to Caesar's régime, and probably a year later than the Lex Municipalis. What the last-named law did in fact was to give precision, fixity and obligatory force to what were in many cases already existing customary forms.

I think we may go a step further and say (1) that all *leges datae* for at any rate Roman towns issued after 45 B.C. were definitely based upon Caesar's law, and (2) that the final clause of that law allowed, if it did not compel, constitutions previously given to be revised and corrected within a certain date on the lines now legally laid down.

As to the exact date of the present law, there is no certain evidence. In the year 62 B.C. Cicero certainly speaks of Tarentum as a *municipium* (Pro Arch. Poet. V. 10). But this is not a sure *terminus ante quem* for the date of the *lex data*, since in a loose sense Tarentum was a *municipium* ever since 89 B.C.

A certain amount of difficulty is presented by the various ways in which the magistrates of Tarentum are described in the law. In verse 7 they are *quattuorviri aedilesque*. This is clearly an inaccuracy, and is corrected in verse 9, where the *quattuorviri* are mentioned alone. The aediles, as is proved abundantly by inscriptions, were included under the *quattuorviri*. In verse 14 we have *comitia duovireis aedilibusve rogandeis*. This phrase seems not inconsistent with the view that the highest magistrates were collectively *quattuorviri*. But, as was very usual, two of these were *jure dicundo* and the other two were *aedilicia potestate*. As the elections for the two divisions of the board were probably distinct, they are not unnaturally spoken of as *duoviri* and *aediles*. Finally, in verse 39 they are described as *quattuorviri duoviri aedilesve*. This is an exhaustive description, the first term including the other two; the magistrates being *quattuorviri*, whether *duoviri jure dicundo* or *aediles*. If we adopt this explanation, the only actual error would be the insertion of aediles in verse 7.

For the rest, the points to notice in the fragment are: (1) The provision with regard to *peculatus*, that only a magistrate can bring the action, whereas the person who dismantles his house can be sued by any one at will (vv. 6 and 35). (2) The methods of exacting security against peculations, in the case of the first quattuorvirs and for the future (vv. 8 and 14). (3) The final authority of the Senate in matters of pecuniary obligation on the part of officials (vv. 20 and 25). (4) The *comitia* for the election of magistrates, and the voting by *curies*, of which more details will be found in the Lex Malac. (5) The phrase *post hanc legem datam*, as proving the character of this law (v. 8). (6) The provisions in caps. 3 and 4 for preventing the depopulation and dilapidation of Tarentum. (7) The similarity between caps. 3 and 5 and clauses in the Lex Col. Gen. (8) The last fragmentary clause, placing restrictions on change of domicile, in the case of persons under obligations to the *municipium*.

LEX MUNICIPII TARENTINI

I. 1 . . . . . nor shall any person appropriate by fraud or peculation[1] any money which does or shall belong to the said municipium, whether public or sacred or employed for religious 2 ends, or do aught whereby such fraud or peculation may ensue; 3 nor shall he with wrongful intent impair the public estate by 4 a fraudulent handling of the public accounts. Any person so 5 acting shall be liable to a fine of four times the amount appro- 6 priated, and shall be condemned to pay the said money to the municipium, and the claim for and exaction of the said money shall belong to the magistrate for the time being within the municipium.

II. 7 As respecting the quattuorviri and aediles first created by this 8 law, whoever of the same shall have come to Tarentum[2] shall within the twenty days next following his coming to Tarentum, 9 subsequent to the publication of this law, take steps, whereby, standing surety for himself, he shall furnish sureties and 10 securities before the quattuorviri, to be a guarantee that any

[1] This chapter deals with *peculatus*, the theft of public or sacred money. With this is included here *pecunia religiosa*, money not exactly belonging to the gods or the State, but employed by individuals for religious purposes, or perhaps deposited by them in temples. *Peculatus* is not at Tarentum a capital charge as in the *quaestio de peculatu* in Rome, but one to be punished by quadruple restitution.

[2] This chapter deals with the securities for caution money to be exacted from magistrates. We shall find it dealt with again in the Lex Malac., cap. 70. The normal course laid down by the law is, that candidates for the quattuorvirate were to furnish securities to the presiding magistrate before their *renuntiatio* at the *comitia*. But this was clearly impossible in the case of the first college. Probably 'the first created by the law' were Roman citizens nominated by the commissioner or commissioners who issued the *lex data*. These were to furnish securities within twenty days of their arrival at Tarentum, either, as Mommsen supposes, to the commissioners themselves (the *quattuorviri* of verse 9), or, as I should suggest, each in turn to his own three colleagues.

money belonging to the said municipium, whether public, sacred,
or employed for religious ends, passing into his hands during his
magistracy, shall be duly and rightly secured to the municipium 11
of Tarentum; and that he will render an account of the said 12
matter in such manner as the senate shall decree; and the said
quattuorvir, to whom such surety shall be furnished, shall accept 13
the same and cause the matter to be entered in the public records; 14
furthermore, whatever person shall hold the comitia for the
election of duoviri or aediles shall, before any candidate for 15
a magistracy at the said comitia shall be declared elected[3] by 16
a majority of the curiae, accept from the said candidates satis- 17
factory sureties, to guarantee that any money belonging to the 18
said municipium, whether public, sacred, or employed for religious
ends, passing into the hands of any of the said persons during 19
his magistracy, shall be rightly and duly secured to the muni-
cipium of Tarentum, and that he will render account of such 20
matter in such manner as the senate shall decree,[4] and he shall
further see that the said matter is entered in the public accounts; 21
and respecting any person, to whom any business in the muni-
cipium has been publicly given by decree of the senate, or who 22
has transacted any public business, or who has expended or re-
ceived any public money, it shall be the duty of the said person, 23
to whom such business shall be given, or who has publicly trans-
acted such business, or who has expended or received public 24
money, to give and render an account of such matter to the
senate in all good faith within the ten days next following the 25
decree issued by the senate of the said municipium.

Every person who is or shall be a decurio of the municipium III. 26
of Tarentum, or who shall have declared his vote in the senate 27
of the said municipium, shall in all good faith possess a house of
his own[5] in the town of Tarentum or within the territory of the 28

[3] We shall see more of the *comitia* and *curiae* in the Lex Malac. The *renuntiatio* which is here loosely assigned to the *curiae* was of course really the act of the presiding magistrate.

[4] Similarly in the Lex Col. Gen. the *decuriones* are the ultimate authority in such matters.

[5] The object of this chapter is clearly to prevent the depopulation of Tarentum, and in particular to prevent the emigration to Rome of the

said municipium, roofed with not less than 1,500 tiles.[6] In the case of any such person not so possessing a house of his own, or in the case of another party having bought or received by transfer such house from him, whereby this law may be fraudulently evaded, the said person shall be liable to pay to the municipium of Tarentum the sum of 5,000 sesterces for every year.

IV. No person within the town of the said municipium of Tarentum shall unroof or demolish or dismantle any house without a decree of the senate, unless he shall intend to restore such house to its former condition. Any person acting in violation of this prohibition shall be liable to pay to the municipium a sum of money equivalent to the value of the said house, and may be sued at will[7] by any person for that amount. The magistrate who shall exact such fine shall duly pay one half[8] thereof into the public treasury; the other half he shall spend on the games to be given by him in public during his magistracy, or if he shall desire to expend the same on some public work to commemorate his name,[9] it shall, without risk of penalty, be lawful for him so to do.

V. [10] If any quattuorvir, duovir, or aedile shall desire in the public interest of the said municipium, and within the territories belonging to the said municipium, to make, dig, alter, build, or pave any roads, dykes, or sewers, it shall be lawful for the said

better classes. *Decuriones* are also ordered in the Lex Col. Gen., cap. 91, to live in the colony, but this was more with a view of securing their attendance in the senate.

[6] On the custom of estimating the size and value of a house by the number of tiles see Dio Cass. 46. 31. Clause IV, to prevent the dilapidations of the city, is repeated almost word for word in the Lex Col. Gen., cap. 75.

[7] Any individual may sue, but a magistrate alone can exact the penalty (see Lex Col. Gen., cap. 77).

[8] By the corresponding clause in the Lex Malac. the whole sum was to be paid into the *aerarium*. Here the custom of the aediles in Rome is followed. The other half could be used for the games.

[9] *Ad monumentum suom*; so Festus says, p. 139: 'Monumentum est quod et mortui causa aedificatum est, et quicquid ob memoriam alicujus factum est, ut fana porticus.'

[10] This clause is found in the same words in the Lex Col. Gen., cap. 77.

person to do the same provided that no injury be done to private persons. 42

In the case of any person desiring to depart from the municipium of Tarentum, if the said person being a citizen of the said municipium shall owe no money to the municipium and shall not have been duovir or aedile in the municipium of Tarentum during the six years[11] previous to such desire, it shall be lawful for the said person, without risk of penalty, to change his domicile. VI. 43 44

[11] The interval of six years after the magistracy would be necessary to cover the possibility of his not having rendered his accounts, and so having freed himself from the liabilities of his *cautio*.

THE LEX RUBRIA

What is here included under the title of Lex Rubria consists of two parts, a larger and a smaller. The larger portion has long been known, and was discovered on a brass tablet at Veleia. It is evidently part of the fourth tablet of the law, and contains the concluding sentence of cap. 19, caps. 20, 21, and 22, together with the beginning of 23. The law clearly deals with the judicial competence of the municipal magistrates in Gallia Cisalpina. Its title, Lex Rubria, is made practically certain by the recurrence of the phrase *e lege Rubria* within the two formulae given in cap. 20. There can be no doubt that the law was occasioned by the fact that after the grant of the full *civitas* to the Transpadani in 49 B.C. the whole of Gallia Cisalpina was subject to Roman law, and it therefore became necessary to specify and limit the judicial competence of the municipal magistrates in relation to the imperial authorities. But, previous to the discovery of the smaller fragment, it was by no means certain whether this Lex Rubria was the immediate consequence of Caesar's enfranchisement of the Transpadani, and is therefore to be regarded as one of Caesar's own laws, or whether it was not rather the result of the change made in 42 B.C., when Gallia Cisalpina ceased to be a province and was made part of Italy. In the larger fragment there is no internal evidence which exactly determines the date. Rubrius is himself unknown, and may have been a tribune at either time. The description of the field within which the law was to operate as Gallia Cisalpina is undoubtedly in favour of the earlier date, since this was the official description of the province. But this by itself is hardly conclusive, because some description of the region dealt with was necessary, and the familiar geographical appellation was perhaps less cumbrous than any other, and may well have been employed after the province had ceased to exist. On the other hand, a more serious argument for the later date was found in the fact

that no mention is made of the proconsul. His judicial competence is wholly ignored, and the competence of the municipal magistrates is limited, not in relation to the proconsul, but by the supreme judicial authority of the praetor in Rome. There is indeed only one passage in the law where a conceivable reference to the proconsul may lurk, viz. at the end of cap. 20, where it is enacted that no person vested with *imperium* or *potestas* shall prevent a trial ordered by the municipal magistrate.

However, the smaller fragment seems to settle this vexed question. It consists of three small portions of a tablet, fortunately cohering with one another, which were found at Ateste in 1880, and are now in the Museum at Este. These *fragmenta Atestina*, in spite of a few points of difference, which will be noticed later, almost certainly belong to the same law as the larger fragment found at Veleia. If so, they settle its date, for allusion is made to a law passed by L. Roscius on the 11th of March, clearly in the same year in which the law itself was passed. Now this Lex Roscia can only have been the law enfranchising Transpadane Gaul, Roscius, as we know, being one of the praetors for 49 B.C.[1] We have therefore no alternative but to place the Lex Rubria, supplementing this enfranchisement, in 49 B.C. The difficulty with regard to the proconsul's judicial authority being ignored may perhaps be explained by remembering the peculiar circumstances of the province. In the first place, there had been Roman colonies, such as Mutina, Parma, and others, in Gallia Cisalpina before the country was made a province by Sulla. These had of course been subject to the praetor's jurisdiction, and naturally remained so when the province was constituted, the *praefectus Mutinensis* of cap. 20 possibly receiving his explanation in this way. In the second place, the greater part of the province had received the *jus Latii* in 89 B.C., and was therefore not subject to Roman law at all. In the third place, when Caesar granted the full *civitas* to the whole province, he must have intended to put the Roman citizens of the province on a footing of equality with the other Italians, and therefore quite naturally the Lex Rubria, which supplemented

[1] Caes. B. C. 1. caps. 3, 8, 10 ; Cic. ad Att. VIII. 12. 2.

the enfranchisement, established for the whole province the same relations between the municipal and the Roman jurisdiction which subsisted in the rest of Italy. The proconsul had of course jurisdiction in military affairs and over non-citizens, but over Roman citizens only where they were mere residents and not domiciled in his province. It must be remembered that Cisalpine Gaul was the only province consisting wholly of Roman citizens, and the provincial status of the country was no doubt regarded by Caesar as provisional.

With regard to the antecedents of the law, it will be enough to remember the following points. In the period before the Social war the district south of the Po had already become largely Romanised, partly by the foundation of colonies like Mutina and Parma, partly by the existence of numerous *fora*, like Forum Lepidi, Forum Cornelii, Forum Livii, which were on their way to being Roman towns. After the Social war all this district received the full Roman franchise (Ravenna alone seems to have remained a *civitas foederata* till 49 B.C.). North of the Po, on the other hand, there were one or two Roman colonies like Eporedia, a few Latin colonies like Cremona and Aquileia, and a number of *civitates foederatae*, like Genua, Taurini, Novaria, Mediolanum, Brixia, Verona, Ateste. There were also probably many *fora*, such as Veleia and Brixellum, in more or less close connexion with these *civitates*. The status of this Transpadane district was settled by the Lex Pompeia of 89 B.C., which gave the Roman *civitas* to the Latin colonies, and the rights of Latin colonies to all the *civitates foederatae*. This condition of things was not changed when Sulla constituted the province of Gallia Cisalpina, the Cispadane part of which already possessed the full *civitas*. To complete the work of enfranchisement by the grant of the full *civitas* to the Transpadani became part of the popular programme during the next forty years. It may have been irregularly granted under the Cinnan régime, for in 65 B.C. we find Crassus, as censor, attempting to include the Transpadani in the burgess register, while Caesar not only freely enlisted Transpadani in his legions, but claimed that Novum Comum should be regarded as a Roman colony. How deeply pledged Caesar felt himself to be on the subject is proved by the

fact, known to us from the Atestine fragment of the Lex Rubria, that the enfranchisement was carried out by the praetor L. Roscius on the 11th of March, 49 B.C., six days before Pompey left Brundisium, and twenty days before Caesar's own arrival in Rome.

In the Lex Julia Municipalis we shall see that the list of communities affected by its operation is given as *municipia, coloniae, praefecturae, fora*, and *conciliabula*. In the present law the list is as follows:—

Oppida, municipia, coloniae, praefecturae, fora, vici, conciliabula, castella, and *territoria*. Of these, *oppida* and *territoria* are both generic, the former including the next three, the latter perhaps the following four.

With regard to the five classes common to the two laws, I will refer to the introduction to the municipal law, only remarking that the number of places, originally *fora*, and perhaps still retaining the name, was probably exceptionally large in the Cispadane district of Gallia Cisalpina.

In the Lex Municipalis the words *civium Romanorum* follow the list; in the present law they are absent. Mommsen argues from this that the Lex Municipalis was applicable not only to Italy but to those communities also in the provinces which consisted of Roman citizens. On the other hand, the absence of the words in the Lex Rubria proves, he thinks, that there were no non-citizen communities in Cisalpine Gaul. The former inference is no doubt correct, though it is worth noting that the Lex Julia adds the words *civium Romanorum* to the list of communities 'in Italia' which are to take the census, where they can hardly have any particular significance. But the second inference seems by no means a safe one. For it is quite certain that many of the *vici* and *castella* in Cisalpine Gaul did not possess the full *civitas*. What the *vici* and *castella* were appears best from the definition of Isidorus: 'vici et castella et pagi sunt quae nulla dignitate civitatis ornantur, sed vulgari hominum conventu incoluntur, et propter parvitatem sui majoribus civitatibus attribuuntur.' They were not therefore independent communities to the same extent that the *fora* and *conciliabula* were. In the municipal law, accordingly, there is no occasion to mention them, but from the point of view of the Lex Rubria they are naturally

enumerated along with the larger towns, because their inhabitants are the subjects of legal rights and appear before the judicial authorities in the towns to which they are attributed. This 'attribution' or 'contribution' within a town territory implied incomplete membership in the town community, payment of taxes to it, subjection to its jurisdiction, but not necessarily the active rights of citizenship. In regard to this last point, however, there was probably a difference between Cispadane Italy and the Transpadane district, which retained certain features in common with the provinces, where we are most familiar with this 'attribution'. This was due to the greater survival in the Celtic, Germanic, Iberian, or Celtiberian regions of the cantonal organization. Thus we know from the edict of Claudius *de civitate Anaunorum* that the Anauni and other *vici* attributed to the *municipium* of Tridentum did not possess the Roman *civitas*. This was presumably the case with many, if not all, the *vici* falling under the operation of this law.[2]

These villages or small communes had of course still less than the *fora* and *conciliabula* magistrates with the titles of *duoviri* or *quattuorviri*. They were no doubt, as a rule, under the control of four *magistri*, but, as we know from an inscription relating to the *vicus Furfensis* in the Sabine region, dating from 58 B.C., there were sometimes aediles elected by the *vicani*. There must have been, therefore, something answering to the *comitia* of the larger communities, but there is no indication of a senate or *decuriones*. It appears from the inscription alluded to that the aediles had charge of the local temples and the common property, together no doubt with some police responsibility. In all other respects the *vici* were subject to the municipal authorities of the town to which they were attributed.[3]

Not very different were the *castella* or *castra*. Our main information about these comes from an inscription entitled 'sententia Minuciorum inter Genuates et Veiturios' (C. I. L. I. 199). At the date of the inscription, 177 B.C., there were

[2] I should myself therefore be inclined to attribute the absence of the words *civium Romanorum* to this cause rather than to that assumed by Mommsen.

[3] See the *Lex vicana Furfensis* in Bruns, p. 260.

five *castella* in the territory of Genua, then a *civitas foederata*. These *castella* paid their taxes to the central *civitas* and were subject to its jurisdiction; but they elected their own magistrates, and in case of dispute with the *civitas* could refer the matter to the Roman Senate. Whether the term *castella* points to the fact that they were originally settlements of old soldiers sent out by the local communities, is doubtful, but the supposition would perhaps account for *castella* belonging to one community being found in the territory of another. Such distant *castella* were in a sense *praefecturae*, since they were under the judicial authority of *praefecti* sent out from the mother *civitas*. There are instances in which both *vici* and *castella* become *coloniae* in course of time.

The judicial authorities in the towns of Gallia Cisalpina are described in the formulae of cap. XX as *duoviri*, *quattuorviri*, and the *praefectus Mutinensis*. The title of the last official may possibly go back to the time when Mutina, as a Roman colony, was a *praefectura* of Rome.[4] The title may for some reason have survived at Mutina, though the *praefectus* can no longer at this period have been sent out from Rome. But the title is of course used here generically and typically for judicial officials in any of the towns, who are called *praefecti*, just as the term *jus Caeritium* had at one time been a generic description of a particular grade of privilege. In other clauses we get the phrase *duovir, quattuorvir, praefectusve*, which seems to correspond to the more general *magistratus prove magistratu*. Here the *praefectus* and the *pro magistratu* are apparently identical, and are explained by the fact that in the absence of the *duoviri* or *quattuorviri* a *praefectus* was nominated to take their place.[5] Under quite a different category is to be placed the *duovir isve quei . . . jure dicundo praefuit*, in the second clause of the Atestine fragment. This clause is referring to arrangements prior to the Lex Roscia, and therefore to the Latin communities of the Transpadane district. Setting aside exceptional cases and older towns, where praetors and even consuls are found, *duoviri* were

[4] See introduction to Lex Jul. Mun., p. 144.

[5] It is quite impossible to suppose that the *pro magistratu* is the proconsul.

the ordinary magistrates for Latin communities, as *quattuorviri* were for *municipia c. R.* We shall find this exemplified in the Latin towns of Salpensa and Malacca in Spain, while a *duovir* is attested for Ariminum, in the period before that town received the Roman *civitas* (C. I. L. XI. 400). Cicero too, alluding to Caesar's design of enfranchising the Transpadani, says: 'eratque rumor de Transpadanis eos jussos esse quattuorviros creare' (Ad Att. V. 2. 3).

In regard to municipal matters generally, the Lex Julia Municipalis would of course apply to Gallia Cisalpina as well as to the rest of Italy. It in fact applied to all municipalities of Roman citizens, wherever and whenever coming into existence. The Lex Rubria, limited as it was to judicial relations, was naturally less general in its application. It was occasioned, as we have seen, by the changed condition of the whole Transpadane region after the grant of the *civitas* to it by the Lex Roscia. It was intended therefore for a province, but for a province in a unique position, consisting wholly of Roman citizens and intended soon to become part of Italy. It was almost certainly not applicable to municipalities of Roman citizens in the extra-Italian provinces, where Roman law was represented not by the praetor but by the governor. On the other hand, we are not to suppose that Gallia Cisalpina was being treated differently from the rest of Italy. The province was now practically and was soon to be formally part of Italy, and the Lex Rubria simply made applicable to it the same judicial principles, the same forms of procedure, and the same lines of demarcation between local and imperial competence, which had long, either by custom or by statute, been in force for the rest of Italy. To the Cispadane district the law may have made little difference, but it vitally affected the hitherto Latin communities north of the Po.

Our extant fragments belong to the fourth table of the law, and the first three tables are lost. What they may have contained is therefore a matter of conjecture. We may, however, safely follow Mommsen's assumption, that they laid down the general principles of municipal jurisdiction, and the methods of dealing with particular kinds of process. In this, they probably

and naturally followed the order of the praetor's *edictum perpetuum*. This seems to be a fair inference from the fact that the subjects of caps. XIX and XX, *novi operis nuntiatio*, and *damnum infectum*, come under the same heading in the edict. An even more certain assumption is, that the relations and divisions of competence between the municipal courts and the praetor's jurisdiction, and the limitations imposed by the latter upon the former, which are only incidentally alluded to in our fragments, were systematically set forth. Those which can be gathered from the law, as we have it, are the following: (1) The municipal magistrates had jurisdiction in ordinary civil matters where the amount in dispute did not exceed 15,000 sesterces. Cases involving more than that amount had to go before the praetor in Rome. (2) It seems a fair inference from the concluding clause of cap. XXI that even in cases involving more than 15,000 sesterces the municipal magistrate could take initial proceedings, in the shape of ordering the defendant to enter into a *vadimonium* for his appearance in Rome. This would take the place of the *in jus vocatio*, which might therefore be dispensed with before the praetor. In the case of the defendant's refusing, the municipal magistrate might lay the matter of the *vadimonium* before *recuperatores*, and the defendant would be bound over, probably in a more stringent way. It is quite impossible to suppose, as I think Wordsworth does, that the *recuperatores* were to decide the main case. This would have enabled any defendant, by refusing to enter into a *vadimonium*, to stultify the general rule that cases over the specified amount were to be tried in Rome. (3) It appears from a phrase in cap. XXII, *sei ea res erit de qua re omnei pecunia ibei jus deicei . . . ex h. l. oportebit*, that in certain cases, the nature of which was no doubt specified in the earlier portion of the law, the municipal magistrate had jurisdiction irrespective of the amount claimed. (4) It appears from the first clause of the Atestine fragment that in certain cases of breach of contract and private delict, where the sum involved did not exceed 10,000 sesterces, the option was allowed to the accused of having the matter tried before the municipal magistrate. It is clear, however, from the concluding words of the clause, that these cases did not fall under the general category

of cases assigned by this law to the municipal courts. It is this fact which accounts for the maximum sum being smaller than that mentioned in the other clauses, a discrepancy which has led to the quite unnecessary inference that this fragment belongs to some other law. The point is that condemnation in serious cases of this kind, as we know from the Lex Julia Municipalis, was followed by *infamia*. But *judicia famosa* were not allowed to the municipal magistrates, and this accounts for the smaller maximum. (5) In the case of a defendant refusing to give a *cautio damni infecti* before the praetor's court, he would be liable to a *missio in possessionem*. It appears from cap. XX that the municipal magistrate can only send the matter before a *judex*, with a *formula* taken from the edict of the *praetor peregrinus*. (6) It appears from cap. XXI that in certain cases of condemnation for debt the municipal magistrate might arrest the debtor, and make him *addictus*. But these were provisional and not final steps, and cap. XXII makes it clear that not only *missio in possessionem*, and the *proscriptio* and *venditio bonorum*. but also the final *addictio* were in all cases reserved for the praetor in Rome. The last two cases would undoubtedly fall under the general rule: *quae magis imperii sunt quam jurisdictionis, magistratus municipalis facere non potest*. This rule, however, would be qualified by another maxim: *cui jurisdictio data, ea quoque concessa videntur, sine quibus jurisdictio explicari non potest*. It was by virtue of such a qualifying rule that provisional *ductio* and *addictio* are allowed in cap. XXI. Generally speaking, the jurisdiction of the municipal magistrates was not delegated, but concurrent with that of the praetor, though qualitatively inferior in certain respects. But the procedure in connexion with *damnum infectum*, described in cap. XX, depending upon *formulae* supplied from the praetor's edict, and employing the *praetoria stipulatio* would seem to be an instance of actual delegation and an application of *imperium* which is best explained in this way. For according to Ulpian: *jubere cureri stipulatione praetoria, et in possessionem mittere imperii magis est quam jurisdictionis*.

We may assume, then, that the general object of the Lex Rubria, passed no doubt later in 49 B.C. during Caesar's absence in Spain, was the establishment, on lines already familiar to the

rest of Italy, of a uniform procedure for the municipal courts of Gallia Cisalpina and of precise relations between them and Rome. This was contained in the three lost Tables. A secondary object, of which we have some remains in the three extant caps., seems to have been to give directions to the local magistrates, and in certain cases to supply them with *formulae* for dealing with difficult cases, where the defendant had recourse to obstructionist means of preventing the matter from going before a *judicium* in the ordinary way.

Of cap. XIX we have only the concluding sentence. It clearly has reference to the case of a formal protest, *nuntiatio*, against the construction of some new building, dangerous or prejudicial to the party who makes the protest. Under certain conditions apparently the praetor could intervene, but his intervention was subject to the proviso that the municipal authorities had not already dismissed the *nuntiatio*.

Cap. XX deals with the case of *damnum infectum*, complicated by the irregular conduct of the defendant and by the fact that some actual damage has subsequently accrued. L. Seius is threatened with some damage to his property from the ruinous condition, it may be, of some building belonging to Q. Licinius. He accordingly summons Licinius before the tribunal of the municipal magistrate and demands a *stipulatio* from him to the effect that he will make good any damage that may be caused. In certain cases, either from the extent of the damage apprehended, or from the position or character of Licinius, he may demand more definite security, *satis accipere*. All this took place *in jure*, before the tribunal of the magistrate, and if no damage resulted, or if it did, if Licinius, having entered into the required *stipulatio*, carried out his agreement, there might be no need of a *judicium*. But it is contemplated in this cap. that Licinius may refuse to enter into any engagement, *repromissio*, or to give definite security, *satisdatio*, and that meanwhile some actual damage is caused. Such a refusal might have necessitated an appeal to the praetor, whose imperium might either compel the *stipulatio*, or proceed to a *missio in possessionem*. But instead of this, the law enjoins that notwithstanding the informality of no *repromissio* having been entered into, and no security given, the

magistrate shall assign a *judex*, and the case be treated as one of *damnum*. The action of the defendant would then be regarded as amounting to absence of defence, and he would therefore be condemned, the damages being perhaps heavier than they would otherwise have been. But to give Licinius a further chance, the law, by a kind of delegation, provides the *formulae*, by which the *judex* is to be instructed in the cases respectively of *repromissio* and *satisdatio* not having been complied with. These *formulae* give Licinius the chance of entering into the *stipulatio*, or furnishing the *satisdatio*, which ought to have been arranged at the original *postulatio*, at any time between the assignment of the *judex* and the beginning of the trial. But in both cases the agreement is now to be in accordance with the *praetoria stipulatio* contained in the album of the *praetor peregrinus*. If this condition is complied with, the case is no longer regarded as undefended and acquittal may be the result. If condemnation follows, it is to be for the amount—left blank for the local magistrate to fill up—contained in the original *stipulatio* or *satisdatio* which Licinius had refused. If at the last moment Licinius refused the praetorian *stipulatio*, the matter would of necessity pass from the municipal court, and *missio in possessionem* with its consequences would be ordered by the praetor. It is somewhat amusing to note in the paragraph which follows that it is thought necessary to explain that Licinius and Seius and Mutina are only fictitious names, not to be inserted in the *formulae* unless they happen to correspond with the actual names of persons and place.

Caps. XXI and XXII deal with the cases of confession and absence of defence, which, however, operate somewhat differently where *certa pecunia* is concerned and where the claim needs money valuation. The ordinary forms of process of course, both for *certa pecunia* and the more miscellaneous actions covered by cap. XXII, must have been contained in the three lost Tables.

Cap. XXI deals with cases of *certa pecunia credita*, the claim for repayment of a specified sum lent, though the amount to be adjudicated upon by municipal magistrates is not to exceed 15,000 sesterces. The special points dealt with in this cap. are in respect to the proceedings to be taken in the event of

inoperative confession or neglect of defence on the part of the person sued. When the parties appear *in jure* before the competent magistrate, the defendant may confess the debt. If he does so, the proper course is either to pay the debt at once or to give security for the payment. Or, notwithstanding his confession, which need not be final or necessarily binding upon the *judex*, he may consent to a *sponsio* proposed by the claimant. This *sponsio praejudicialis* was a kind of wager with regard to the sum in dispute between the two parties, proposed by the plaintiff and accepted with responsible guarantors by the defendant. It was then for the *judex* or *judicium* to decide on this *sponsio*. The present cap. contemplates the case of a defendant who neither supplements his confession by payment, nor security, nor modifies it by accepting a *sponsio* or a *judex*. Again, the defendant, instead of confessing, might simply refuse to answer to the charge in court. It was always a maxim of Roman law that the *indefensus* was *pro judicato*. But here too he might modify his position by agreeing to a *sponsio* or accepting a *judex*. The law contemplates the case of absolute refusal either to plead or to attempt any defence. The enjoinment of the law is simple enough. In all such cases, whether of confession or absence of defence, the 'process, law, right, and action' are to take their course. The defendant is to be condemned by the magistrate, exactly as if the *judicium* had been constituted in the ordinary way and with the ordinary *formulae*. It was clearly a case where *ea quoque concessa sunt sine quibus jurisdictio explicari non potest*, and accordingly in this case, where the issue is quite simple, the sum of money being specified, condemnation is followed by arrest and *addictio*. This of course would cease when the debt is paid. If it is still not paid, the magistrate can order the debtor to enter into a *vadimonium* to appear in Rome, where the matter might have to proceed to the seizure, proscription, and sale of his goods, acts which belong to the *imperium* and are therefore outside the competence of the municipal magistrate. If the debtor completes his contempt of court by a final refusal, the magistrate is allowed to hand over the matter of the *vadimonium* to a *judex* and *recuperatores*, and an *in jus vocatio* would of course be issued by the praetor.

Cap. XXII has reference to more miscellaneous claims, to the possession of disputed property, objects to be restored, acts to be performed, responsibilities and liabilities of all kinds to be made good. In certain cases, specified no doubt in the lost caps. of the law, a claim of any amount may be considered. Otherwise it must not exceed 15,000 sesterces. The legal actions involved in these matters were of course multifarious, but they again are dealt with in other portions of the law. It is again simply a question of confession and absence of defence. The defendant may confess that the object in dispute belongs to the claimant, and that he has it, or that he owes something lent, or ought to restore something wrongly held, or is bound to perform some act, or is otherwise responsible. But he may at the same time refuse the performance, or restitution, or fulfilment of obligation, and even to give security. In certain cases he may be called upon to enter into a *sponsio tertiae partis*, a quasi-penal engagement to pay, if he loses the case, a third part of the money value of the claim as a fine or forfeit. In spite of his confession, he may refuse all this and decline to accept a *judex*. Or he may refuse to answer to the charge at all in the magistrate's court, or, after such refusal, to accept a *judex*. In such cases, the municipal magistrate is directed to deal with the matter as it would be dealt with before the praetor's court in Rome. 'Process, law, right, and action' are to take their course, and the defendant is to be *pro judicato*. But the local magistrate's power ends in these cases with the defendant's summary condemnation. Not only the *missio in possessionem*, and the subsequent proscription and sale of his property, but also the arrest and *addictio* are specially reserved for the judicial authorities in Rome. It is not altogether obvious why *ductio* and *addictio*, which were within the competence of the municipal court in the case of *certa pecunia*, are withdrawn from it in these cases. I can only suggest that the issues are here more complicated. In the one case the claim was for a specified sum of money sterling. In these cases the claim had to be estimated in money value, and, in face of the absolute refusal of the defendant to answer any questions, the condemned person was at once summoned to Rome, where more stringent methods could be adopted. (On

the light thrown by these caps. on the consequences of confession and absence of defence in Roman civil procedure, see Greenidge's 'Civil Procedure in Cicero's time', pp. 251 foll.)

Cap. XXIII is a fragment dealing with the question of distributing a family estate. The consideration of domicile was probably to decide whether such a case should be tried in Rome, or in which municipality.

In the first clause of the Atestine fragment the law is concerned (1) with breaches of contract in connexion with trusteeship, partnership, agency, and guardianship; (2) with such private delicts as *furtum* and *injuria*. As we know from the Lex Julia Municipalis, condemnation in any of these processes or actions might under certain conditions be followed by *infamia*. That the general rule laid down by this law withdrew cases involving *infamia* from the municipal courts is, I think, clear from the words: *utei de ieis rebus de quibus ex h. l. judicia data erunt*. On the other hand, where no *infamia* was threatened the local courts would be competent. But there might be certain cases, of which indeed *infamia* was a possible consequence, but which were at any rate not the most serious, being limited to claims not exceeding 10,000 sesterces. In respect to these no compulsory rule is laid down, but the option is allowed to the accused of having the case tried, if he desires it, before the municipal court. That the cases contemplated might involve *infamia* is proved by the fact that the accused is not only personally responsible, summoned *suo nomine*, but responsible for something actually done by himself, *quod earum rerum quid ipse gessisse deicatur*. (For the distinction between these two phrases, see note *ad loc.*) It is perfectly clear that even these minor cases could not be decided by the municipal magistrate against the will of the accused party.

The second clause is of a much more special character, and merely deals with the immediate consequences of the Lex Roscia upon the newly enfranchised district of Transpadane Gaul. In this district, consisting generally of communities in the position of Latin colonies, jurisdiction had hitherto been in the hands of the *duoviri*, and as these communities were not necessarily subject to the Roman civil law, there had been no *revocatio Romae*.

In other words, there were no categories of cases reserved for the Roman jurisdiction. But the Lex Roscia, by putting these communities in the same position as the Cispadane and other Italian towns, at once introduced the principle of *revocatio Romae* under the same conditions as elsewhere. What this clause enacts is, that this *revocatio Romae* shall not apply to any cases belonging under the former state of things to the jurisdiction of the Latin *duoviri*, and instituted before the passing of the Lex Roscia. Some such clause as this, clearly temporary and retrospective, was required in order to prevent confusion, and to draw a precise line between the old system and the new. I cannot agree with Mommsen that this clause proves *revocatio Romae* to have been prescribed by the Lex Roscia. The Lex Roscia merely granted the Roman *civitas*. By so doing, it undoubtedly implied many things which it did not prescribe, and the *revocatio Romae* was one of them. Reference has already been made to the evidence supplied by this clause as to the date both of the Lex Roscia and of the Lex Rubria itself.[6]

I have not accepted Mommsen's last view about the present law. In his article on the Lex Municipii Tarentini (Juristische Schriften, vol. i, pp. 148 foll.) he argues that it is not a *lex rogata*, but a *lex data*.

The argument does not seem to me conclusive. No doubt after the enfranchisement conferred by the Lex Roscia a number of *leges datae* would be necessary to give constitutions to the newly enfranchised towns. (See note to the last clause of the Lex Jul. Mun. and Intro. to Lex Municipii Tarentini.) These *leges datae*, at any rate after 45 B.C., would be based upon the general Lex Municipalis of that year, and no doubt in judicial matters upon the present law.

Of course if the present law is a *lex data*, it cannot be the Lex Rubria, which in the *formulae* within cap. XX is expressly described as a *Lex* or *Plebiscitum*, i.e. a *lex rogata*. Accordingly Mommsen himself was inclined to regard the Lex Rubria as merely a law concerned with *damnum infectum*. I shall, however, adhere to the view that the present law is the Lex Rubria.

[6] See Mommsen's article on the Atestine fragment, in Hermes, vol. 16, republished in the Gesammelte Schriften, vol. i of the Juristische Schriften.

XIX. . . . . ordered or adjudged, the same shall not be valid. And whatsoever decree or interdict concerning the said matter any such praetor shall issue, whether he shall order a sponsio [1] to be entered into, or judgement to be pronounced, or shall grant a judex concerning the said matter, the said praetor shall cause to be added to the said decree or interdict or sponsio or formula [2] the following exception: 'provided that in such matter the duovir or quattuorvir or praefectus [3] of the said municipium shall not have dismissed the application to prevent the said new construction.' [4]

XX. [5] In the case of any person in Gallia Cisalpina desiring, according to the formula for damage apprehended, to enter into a stipulatio [6] with a second party, or to receive security [7] from him, and having made such demand from the person who in that community shall have the highest jurisdiction, and having taken oath that such action is not with malicious intent, then the said

[1] On *sponsio* see Introduction and caps. XXI and XXII.

[2] *Formula.* The Latin word is *judicium*, but the appointment of a *judex* by a praetor and the praetor's *formula* to guide the *judex* are so closely connected that, as Dr. Greenidge points out, the two terms are often almost synonymous.

[3] *Praefectus.* The *praefectus* here would be a substitute either for a *duovir* or a *quattuorvir* in the case of the absence of either of the latter.

[4] The case of a *nuntiatio novi operis*, formal protest against some new construction, is dealt with in Dig. 39. 1.

[5] For the general contents of this chapter see Introduction.

[6] The text should probably be as Mommsen suggests, *stipulari* and not *restipulari*. The claimant makes the *stipulatio* which the defendant agrees to by a *restipulatio* or *repromissio*. Gaius IV. 31 says: 'Damni vero infecti nemo vult lege agere, sed potius stipulatione quae in edicto proposita est obligat adversarium suum per magistratum, quod et commodius jus et potius est.'

[7] The *satisdatio* required of the defendant was technically called *satisdatio judicatum solvi*.

person, to whose court application shall be made, shall order and decree that the party so brought before his court shall in such matter enter into the required stipulatio, and, if security be due, shall give such security according to the formula. In the case of any such person not having entered into the stipulatio, or not having given the security, if in the interim any actual damage shall be done, or caused, resulting from such matter, or on account of such matter, or under the category wherefor demand shall be made for the said order in respect to such stipulatio or such security against the damage apprehended, then the magistrate or promagistrate,[8] the duovir, the quattuorvir, or the praefectus, to whosesoever court application shall be made on such matter shall, concerning the said matter, assume jurisdiction, assign a judex, and order and compel judgement to be pronounced in such manner as if, when the aforesaid demand was made, the required stipulatio and the required security had been duly entered into according to the formula for damage apprehended. In such matter, the assignment of a judex and the order for pronouncing judgement or the judgement given shall be legal and valid, provided that, in the case of a stipulatio against damage apprehended not having been entered into, the assignment of a judex and the order for pronouncing judgement shall be to the following effect:[9] 'A judex shall be assigned. If, previous to the court concerning the matter in question being held, Q. Licinius shall have, under the category of the matter in question, duly entered into a stipulation in respect to the damage apprehended with L. Seius, in terms of the stipulatio which the praetor peregrinus at Rome has set forth in his album, then, whatever the said Q. Licinius, in accordance with such stipulatio, would be bound to do or render to the said L. Seius, up to the sum of sesterces,[10] in all good faith the judex shall con-

[8] This would be a *praefectus* appointed to represent a *duovir* or *quattuorvir* during his absence. We shall find provisions respecting the appointment of these *praefecti* in the Lex col. Gen.

[9] As explained in the Introduction, the furnishing of these *formulae* from the praetor's edict amounted to a case of delegated jurisdiction, since 'jubere caveri stipulatione praetoria imperii magis quam jurisdictionis est'.

[10] The amount is left blank for the municipal magistrate to supply.

demn Q. Licinius to pay such amount to L. Seius, namely, the amount which the said Q. Licinius has refused to insert in a stipulatio with L. Seius in respect to the damage apprehended in obedience to the decree of a duovir, or quattuorvir, or praefectus of Mutina,[11] such decree of a duovir, or quattuorvir, or praefectus of Mutina having been made in accordance with the Lex Rubria,[12] or the plebiscitum so entitled; if the matter is not proved,[13] he shall acquit him.' Or in the case of security against damage apprehended not having been given, he shall assign a judex in terms to the following effect: 'A judex shall be assigned. If, previous to such court being held concerning the matter in question, Q. Licinius shall, under the category of the matter in question, have given security to L. Seius for the damage apprehended, in terms of the stipulatio which the praetor peregrinus at Rome has set forth in his album, then, whatever the said Q. Licinius would, in accordance with such stipulatio, be bound to do or render to L. Seius, up to the sum of sesterces, the judex shall condemn Q. Licinius to pay such amount to L. Seius, namely, the amount which the said Q. Licinius has refused, under the category of the matter in question, to fix as security to L. Seius for the damage apprehended in obedience to the decree of a duovir, or quattuorvir, or the praefectus of Mutina, such decree of the duovir, or quattuorvir, or praefectus of Mutina having been made in accordance with

[11] On this see Introduction, p. 115. I have there assumed that Mutinensis belongs only to *praefectus*, and that the *praefectus* of Mutina was taken as a type for all judicial authorities in any town bearing that title. This has been the usual view and led Marquardt to go so far as to call Mutina a *praefectura*. I am, however, by no means sure that this *praefectus* of Mutina is not a bogey, and that *Mutinensis* does not belong to the whole phrase, 'duovir, quattuorvir, praefectusve'; the town name being merely added as an example. In this case, the phrase *duovir quattuorvir praefectusve* means what it does elsewhere, the *praefectus* being simply the substitute for one of the two former.

[12] If this phrase had occurred elsewhere than in the formula, it would of course have proved that the present law is not the Lex Rubria. Coming where it does it makes it practically certain that it is that law.

[13] 'Si paret . . . . . condemna, si non paret absolve' were always the two alternatives in the *formula* given by the magistrate to the *judex*.

the Lex Rubria, or the plebiscitum so entitled ; if the matter is not proved, he shall acquit him.' Always provided that the duovir or quattuorvir for jurisdiction or the praefectus shall in the said matter so adjudicate and so provide, that of the names of persons, or of municipia, colonies, or places above mentioned, only those shall be accepted, included, or adopted in the said court, which without wrongful intent ought or should be adopted or included therein, whereby no disadvantage may be liable to accrue in such matter to any litigant or plaintiff from such cause or the use of such name ; and he shall use his diligence that the names written in any of the foregoing formulae, and the name ' Mutina ' shall not be included or adopted in the said court, unless the said names written in any of the foregoing formulae shall belong to those persons who shall be parties in the said trial, and whose suit shall therein be contested, and unless the said matter shall be dealt with at Mutina ;[14] nor shall any magistrate or promagistrate, or any person vested with any imperium[15] or potestas, do anything by means of his intercessio or otherwise to prevent such trial from taking place or judgement being pronounced.

XXI.[16] In every case where a claim is made from any person for the repayment of money lent, specified in amount, coined with the public stamp of the Roman people,[17] in any town, municipium, colony, praefectura, forum, vicus, conciliabulum, castellum, or territory,[18] now or henceforth within Gallia Cis-

[14] It is curious to note the detailed and minute explanation that the names Licinius, Seius, and Mutina are only fictitious names. The explanation seems to imply some reflection on the acumen of an ordinary municipal magistrate.

[15] This seems to be the only allusion in the law to the proconsul of Gallia Cisalpina. Possibly this clause is inserted because the powers given to the municipal magistrate by the foregoing *formulae*, involving as they do the *praetoria stipulatio*, were somewhat exceptional and bordered on *imperium*.

[16] For the important points in this chapter see Introduction, p. 120.

[17] The full expression was *pecunia certa credita enumerata signata forma publica populi Romani*. The completeness of the phrase was to make it clear that the debt was pecuniary, and to be calculated in money sterling.

[18] On these communities see Introduction, p. 113. *Oppida* and *territoria*

alpina, the sum claimed not exceeding 15,000 sesterces, if the said defendant shall confess [19] that he owes or is bound to pay the said money to the claimant, or to the person in whose name the claim is made, in court before the person, who shall have the highest jurisdiction in the said community, and shall fail to pay or to give security for the admitted debt, or to defend himself by entering into a sponsio [20] and accepting a judex in due form, or if, in such court, he shall fail to make answer concerning such matter, or to provide sureties, or to defend himself by accepting a judex in due form; then, concerning the person, from whom the money shall be claimed, and the person, to whom the same should be paid, to all parties and in all matters, process, law, right, and action shall take their course, in like manner exactly as they would or ought to take their course if the person, so confessing the debt, or failing in the said matter to make due answer, or to defend himself by entering into a sponsio and accepting a judex in due form, would have been legally and rightly condemned to pay the said money to the person claiming in his own name, or being the lawful recipient, such condemnation having proceeded from a court duly assigned and duly directed to pronounce judgement.[21] Furthermore, any duovir or

are both generic, the former including the next three, the latter perhaps the last four of the intervening communities.

[19] On the question of confession and absence of defence see Introduction, pp. 120–3. The confession and refusal to answer to the charge are of course *in jure*, that is, before the magistrate's court, not *in judicio*. Wordsworth's statement that this chapter gives jurisdiction to the local court in cases of *pecunia certa* seems to me very misleading. That the local court has such jurisdiction is all along implied. The object of the law is to give directions to the local courts for dealing with certain difficulties, to put certain limitations on their competence and to provide in certain cases for final proceedings to be taken in Rome.

[20] On the *sponsio praejudicialis* see Introduction, p. 121; and more fully, Greenidge, Legal Procedure in Cicero's Time. The *sponsio* is a form of *stipulatio*, but based upon more definite security. It was in fact a kind of wager between the two parties, and therefore in a sense converted an *actio in rem* into an *actio in personam*. The plaintiff sues on the wager with the defendant, but the *judex* in deciding which party has won the wager has to enter into the question of ownership. See Gaius IV. 93.

[21] The general effect of this is, that the person who confesses without

quattuorvir or praefectus, having the highest jurisdiction in the said community, shall, in respect to the said person confessing the debt and failing to pay or to give security, or failing to defend himself by entering into a sponsio and accepting a judex in due form, or to make due answer in court, and therewith failing to pay or to give security, order him without risk of penalty to be arrested and given into addictio [22] for such sum of money, not exceeding 15,000 sesterces, as shall be the subject of dispute between the parties. And any person, to whom the said duty shall appertain of leading such party away, shall do so without injury or penalty; and every such deed or action or order shall be legal and valid. In the case of any person failing to enter into a vadimonium for his appearance in Rome,[23] in accordance with the decree of the highest judicial authority in the said community, or to find a substantial surety, the said judicial authority shall, notwithstanding any enactment in this law, grant a judex and recuperatores for such cause, and direct judgement to be pronounced in accordance with this law.

giving effect to his confession, or who refuses to make any defence, may be summarily condemned by the municipal magistrate.

[22] In the case of *certa pecunia* where the issue was clear and simple, the local magistrate has the right of provisional arrest and *addictio*. In the more complicated cases dealt with in the following chapter this right is specially reserved for the praetor. On the distinction between the two cases see Introduction, p. 122.

[23] This clause is usually taken to refer to debtors of more than 15,000 sesterces who have to enter into a *vadimonium* to appear in Rome. From its place at the end of the chapter, however, it clearly follows on to what has preceded. The *ductio* and *addictio* ordered by the municipal magistrate were merely to compel payment of the debt. If this was still refused the matter would have to go before the praetor. The *vadimonium* ordered by the magistrate would then take the place of the praetor's *in jus vocatio*. If the *vadimonium* was refused, a *judex* or *recuperatores* would be appointed, not of course to settle the original debt, which had now passed out of the municipal jurisdiction, but to settle the question of the *vadimonium*. The defendant would then be compelled to appear in Rome. No doubt there was a similar process, directions for which must have been contained in the earlier portion of the law, for cases wholly outside the municipal jurisdiction, but, again, the *recuperatores* would only deal with the *vadimonium*, not with the main issue. To suppose otherwise, as I think Wordsworth does, would imply that any defendant

XXII.[24] In the case of any claim being made from any person, other than for money lent of a specified sum, coined with the public stamp of the Roman people, in any town, municipium, colony, praefectura, forum, vicus, conciliabulum, castellum, or territory, now or henceforth within Gallia Cisalpina, or in the case of a civil action against the said person, whenever the sum of money claimed or in question shall not exceed 15,000 sesterces; or whenever it shall be lawful in such matter in accordance with this law for jurisdiction to be exercised in such community and a judex to be assigned in respect to the whole sum claimed; if the said person shall confess and state in court before the judicial authority in the said community, with respect to the matter which is claimed from him, or for which the action is instituted against him, that he is bound to give, perform, make good, or restore the same to the person making the claim or instituting the action, or to the person in whose name such claim is made or such action instituted, or that he owes the said matter, or that it belongs to the other party, or that he has the same in his possession, or that he has done the act of which he is accused, or that he is under legal obligation and responsibility for such act, and if he shall, notwithstanding, fail to give satisfaction in the said matter, or if, where a sponsio should be entered into,[25] he shall fail to enter into such sponsio, or shall fail to make restoration, or to defend himself by accepting a judex in due form, or if he shall have failed to make answer in court concerning the said matter, and shall, notwithstanding, refuse to defend himself by accepting a judex in due form; then, concerning the party from whom the claim is made and against whom the action is directed, and concerning the party to whom the said matter shall properly be given, made good, or restored, or the said act performed or satisfaction furnished, process, law,

by simply refusing the *vadimonium* could stultify the general rule that certain cases could only be tried in Rome.

[24] For the matter of this chapter see Introduction, p. 122.

[25] This would seem to be the quasi-penal *sponsio tertiae partis* by which the defendant bound himself, if he lost the case, to pay, in addition to the sum claimed, an extra third part of it. See Greenidge, Legal Procedure, &c., p. 199.

right, and action shall take their course to all parties and in all matters in like manner exactly as they would or ought to take their course if the person, confessing any such matter, or failing to make answer on the said matter, and therewith refusing to defend himself by accepting a judex in due form, had made the aforesaid confession, or failed or refused in the aforesaid respects before the praetor in Rome, or before the person charged in Rome with the supreme jurisdiction in the said matters;[26] and the praetor, or such person charged in Rome with supreme jurisdiction[27] in the said matter, shall assume jurisdiction and make decree concerning all the said matters against the said person and his heir, and shall order the same to be arrested and given into addictio, and their goods to be seized[28] and proscribed and sold, in like manner as though the said person or his heir had made confession on the said matter, or failed to make answer on the said matter, or refused to defend himself by accepting a judex in due form before the said praetor, or the said person charged with supreme jurisdiction concerning such matter in Rome; always provided that no person, save the praetor or the person charged in Rome with supreme jurisdiction, shall order the goods of any such person to be seized or proscribed or sold, or such person to be led into addictio.[29]

XXIII. It shall be the duty of the persons charged with judicial authority in any town, municipium, colony, praefectura, vicus, forum, conciliabulum, castellum, or territory, now or henceforth within Gallia Cisalpina, in the case of any persons in any of the

[26] That is, the *confessus* or the *indefensus* would be regarded as *pro judicato* summarily condemned.

[27] We know from Suetonius that there were periods under the régime of Caesar when *praefecti jure dicundo* discharged the duties of the praetors. We have a similar phrase in the Lex Julia Municipalis.

[28] This was technically the *missio in possessionem*, that is, the seizure of the debtor's whole estate. The *proscriptio* was the public announcement of the sale which usually took place after an interval of at least thirty days. The *missio in possessionem*, as distinctly an act of *imperium*, was wholly outside the competence of the municipal magistrate.

[29] I have suggested in the Introduction, page 122, why the *ductio* and *addictio* allowed to the municipal magistrate in the former chapter are here reserved for the praetor.

above-mentioned communities demanding a judex for the distribution or division of a family estate,[30] to assume jurisdiction, make decree, grant a judex, and order judgement to be pronounced in such wise that [a court shall be held] in the said town, municipium, colony, praefectura, forum, vicus, conciliabulum, castellum, or territory [31] in which the person whose goods are in question shall have his domicile [32] . . . . . .

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THE ATESTINE FRAGMENT [33]

Clause A.

[In the case of any person in any town, municipium, colony, praefectura, forum, vicus, conciliabulum, castellum, or territory, now or henceforth within Gallia Cisalpina, being brought, after the passing of this law, before the court of a duovir or quattuorvir or praefectus for a breach of trusteeship or partnership] [34] or agency or guardianship, either in his own name or as being alleged himself to have committed any of the said breaches,[35] or

[30] *De familia erciscunda.* See Cicero, pro Caecina, 7. 19, and Dig. X. 2.

[31] We should have expected the list here to end with *forum*, since we can hardly imagine that courts were held in the other smaller communities. This may possibly throw some doubt on Mommsen's supplement.

[32] Mommsen supposes that the clause ends with the words: 'and he shall add to the formula the following exception, "the goods having been the property of the person who has had his domicile in the said community."'

[33] On this fragment of the law discovered at Ateste in 1830 see Introduction, p. 111. Whether the fragment belongs to the earlier or later portion of the law I should not like to decide, and I am not aware that Mommsen makes any suggestion on the point.

[34] The fragment begins with the word *mandatei*. The words in square brackets are Mommsen's supplement. The list of contracts occurs again in the Lex Julia Municipalis, verse 111.

[35] The point is that condemnation for breach of these contracts might

in the case of any person, as aforesaid, being party in an action for theft, such theft being alleged to appertain to a free man or a free woman,[36] or in an action for injury, if the person from whom such claim is made, or against whom such action is instituted, shall desire to contest the said matter before a judex within the said municipium, colony, or praefectura,[37] and if the said matter shall involve a sum less than or not exceeding 10,000 sesterces, then it is not the intention of this law to prevent a judex or arbiter from being granted or assigned in such community concerning such matter, or to prevent a court from being held in such community concerning such matter, in like manner as concerning those matters for the which judices shall be properly assigned, and a court properly held and conducted in accordance with this law.[38]

involve *infamia*. Where they did not, the earlier portion of the law has probably given competence to the municipal courts. See Introduction, p. 123. In order for *infamia* to be involved, the defendant must be sued *suo nomine* and *quod ipse earum rerum quid gessisse dicatur*. Mommsen illustrates the distinction in this way. A minor on becoming *sui juris* may be sued for some liability on his estate previously incurred by his *tutor*; in this case he would be sued *suo nomine* because he and not his representative is responsible; but not *quod ipse gessisse dicatur*, because the act was not his own and he would therefore not be subject to *infamia*.

[36] This corresponds to the *furtei quod ipse fecit* of the Lex Julia Municipalis, verse 119. Both phrases exclude thefts on the part of a slave, for which his master was responsible and could be sued. That this limitation is not also applied to the case of *injuria* may imply, as Mommsen suggests, that the application of *injuria* to the acts of slaves was a development later than Caesar's time.

It is clear that none of these cases, even within the amount of 10,000 sesterces, could be dealt with by the municipal courts, except on the express desire of the accused party.

[37] The list is limited to these three because in them alone could the municipal jurisdiction be exercised. Just as in the Lex Julia Municipalis there is a similar limitation in connexion with the census.

[38] It appears from this that in the lost portion of the law there had been some general clause withdrawing all contracts or delicts involving *infamia* from the municipal jurisdiction. The present clause constitutes an *exceptio* to this general rule under the conditions specified.

Clause B.[39]

In all cases of dispute between private persons, of whatever magnitude and involving whatever money, within any municipium, colony, or praefectura, in respect to which jurisdiction or the granting or assigning of a judex or arbiter or recuperatores belonged to a duovir, or to a person charged in such community with judicial authority, either by law, or by treaty, or plebiscite, or by decree of the Senate, or by custom,[40] previous to the law or plebiscite passed by L. Roscius on the fifth day before the Ides of March, it is not the intention of this law, in respect to such cases or such amounts of money, that a private person shall have the right of taking the same to Rome; or that the person charged with judicial authority in such community shall be deprived of jurisdiction and such power of granting a judex or arbiter as properly belonged to the said person charged with judicial authority in such community previous to the law or plebiscite passed by L. Roscius on the fifth day before the Ides of March.

[39] On the object of this clause see Introduction, p. 123. It has a special and retrospective reference to the communities in the Transpadane district enfranchised by the Lex Roscia of March 11, 49 B. C. Up to that date these had been Latin communities under the judicial authority of their own *duoviri*. And as Latin communities were not necessarily subject to the Roman law, the *duoviri* had been competent for all cases involving any amount of money. There had therefore been no *revocatio Romae*. This clause simply enjoins that the consequences of the Lex Roscia shall not apply to any cases already instituted before the *duoviri* previous to the passing of that law. For cases instituted later than that date of course the provisions of the present law would be applicable, and there would therefore be the *revocatio Romae* for all cases over the specified maximum or which necessitated the *missio in possessionem*. As I have pointed out in the Introduction, the *revocatio Romae*, though a logical consequence of the Lex Roscia, was not actually prescribed until the Lex Rubria was passed. Mommsen sweeps away the difficulty involved in the absence of any mention of a *revocatio* to the proconsul which has led some people to place the Lex Rubria after 42 B. C. by asserting that the *revocatio Romae* was clearly from this clause prescribed by the Lex Roscia. I think a careful reading of the clause will show that this is not the case.

[40] 'By law' with special reference to the Lex Pompeia, 'by treaty' in the case of the *civitates foederatae*, 'by plebiscite or decree of the Senate' as explained by Gaius I. 95 'Latii jus quibusdam peregrinis civitatibus datum est vel a populo Romano vel a senatu vel a Caesare'.

THE LEX JULIA MUNICIPALIS

This law was engraved upon a large brass tablet, of which two considerable fragments are extant. The larger, found at Heraclea, occasioned the old description of the law as the Tabula Heracleensis. The other was in England in the seventeenth century. Both are now in the Naples Museum. The writing is exceptionally well preserved, and the text nearly perfect, as far as it goes. Unfortunately it constitutes perhaps only a small portion of the whole law.

It is established beyond doubt that this is the law by which Julius Caesar regulated the internal organization both of the city of Rome itself and also perhaps, not excepting the Cisalpine Province, of the other towns of Italy, which since 90 B.C. had possessed the full Roman *civitas*. The jurists refer to this law as Lex Municipalis, but we get its full title in an inscription from Padua (Wilm. 2130), in which M. Junius Sabinus is described as *quattuorvir aedilicia potestate e lege Julia municipali*.

That the law was passed before the death of Caesar there is decisive internal evidence. In the first place, the month of July is still called Quintilis (v. 98). Again, it seems from the way in which the aediles are spoken of as curule or plebeian, that the 'aediles Cereales', added in 44 B.C., were not yet in existence. But the date as well as the identity of the law is best established by a passage in a letter of Cicero written in Feb., 45 B.C. In this he refers to information received from Balbus as to the provision in the law for the exclusion of *praecones* from the municipal senates (v. 94), and expresses his satisfaction that the exclusion does not extend to those who had formerly pursued that trade (Ad. Fam. VI. 18. 2). This proves that in the beginning of 45 B.C. the law was already drawn up but not yet passed. It was no doubt passed about the end of the year, after Caesar's return from Spain.

The general object of the law was to meet in a more systematic

and statesmanlike way than had yet been attempted the new situation in Italy caused by the general enfranchisement after the Social War. In place of the heterogeneous collection, which had marked the earlier period, of Roman colonies—not all possessing the same degree of autonomy—*municipia* of full or half citizens, *praefecturae*, with little or no municipal organization, old Latin towns, more recent Latin colonies, and the various grades of less privileged *civitates foederatae*, there had emerged an *Italia tributim discripta*. From this time all citizens of Italian towns were Roman citizens, with the right of voting in the Roman *comitia* and of going through the magisterial career. All towns, no longer as a matter of choice, but as a matter of course, adopted the Roman civil law. The Roman language, Roman names, Roman dress, and in a word the Roman civilization prevailed practically throughout Italy. Italy in fact was coming to be the complete example of Roman assimilation, in which the original perioecic relation was not so much ennobled as transformed.

It is, however, with the purely political condition of Italy that we are here concerned. There is no evidence that Sulla did much in this respect to meet the new situation. He no doubt accepted the fait accompli of the enfranchisement, but his gigantic scheme of colonization, his confiscations of territory, and his punishment of certain cities by the loss of civic rights were a real though perhaps only temporary cause of unsettlement. That the territorial boundaries between the different communities must have been considerably readjusted was perhaps of minor political importance; though, as we shall see later on, owing to the acquisition of the citizenship, a number of smaller centres separated themselves from the older towns and became independent or semi-independent communities.

The most far-reaching political result of the new *Italia tributim discripta* was the changed position of Rome, and the new relation in which she stood to the other communities. Italy was no longer divided into two portions, one, consisting of States isolated from one another, but all bound to a dominant mistress, the other of cities which were not States at all, but outlying fragments of the one city State, Rome. In place of the old city

State a new republican State had arisen, a political organism of which Rome was indeed the head, but of which the other cities were the independent members, states within the State. 'Rome' was still of course the sovereign head of a Mediterranean Empire, but the actual city of Rome was merely the greatest Italian municipality, and the seat of government, which might be transferred to Capua or Ravenna without changing the character or even the name of the Roman Republic or the Roman Empire.

But if this Italian Republic was to be a real and living organism, adjustments had to be made, anomalies removed, uniformity introduced, fictions given up. If the Italian townships were really to be members of a republic, and not autonomous city states, their relations with the central government must be adjusted; some limitation must be put upon the eccentricities and anomalies of local usage and machinery; some approach to a common, though not necessarily unvarying type of constitution must be made; and above all, the new citizens, far and near, must be provided with some more serious and real means of using their citizenship than the sham privilege of voting in the Roman *comitia*. Sulla, as we have seen, contributed little or nothing towards this necessary readjustment. Nor should we expect much that was systematic from the alternations of precarious senatorial government and mob rule which marked the following period. In all probability something was done, and in the case of the colonies and older *municipia* may have been done earlier, to frame a more or less definite constitution in particular cases. A law would be passed empowering a commissioner or commissioners *dare leges* for some community, and the *Lex Municipalis* or *lex data* so established formed the constitutional charter of the town. Claudius Pulcher framed such a constitution for Halaesa in Sicily in 95 B.C. (in Verr. II. 49. 122), while it is implied in the last clause of the Lex Jul. Mun. that such commissioners were not uncommon. Presumably many of the Italian communities admitted to the franchise after the Social War had their constitution revised in this way, but there is little or no definite evidence.[1] No doubt

[1] Perhaps the most important piece of evidence is the Lex Municipii Tarentini. See the Introduction to and translation of this law, p. 102 foll.

the Italian towns had their assemblies, senates, and magistrates. Probably certain general lines were followed, but in the absence of any general statute, and owing to the sporadic work of these commissioners,[2] all sorts of anomalies remained, both in functions and titles, and in the precise dependence on the central government. That in the non-Roman towns of earlier days the chief magistrates were sometimes dictators, sometimes praetors, sometimes aediles, we know from the Lex Acilia (verse 78). But the same discrepancies lived on. Though there may have been a growing tendency for the highest magistrates to be styled *duoviri* or *quattuorviri*, dictators are still found in places like Aricia and Lanuvium, praetors and even consuls in still more, while as we know from Cicero the highest magistracy in Arpinum was still the aedileship.

But far more unsatisfactory than all this was the ambiguous position of the new Italian citizens as enfranchised members of the *populus Romanus*. The *jus honorum* was no doubt increasingly a reality for the few, and Cicero was far from being a solitary instance of a *municipalis eques* holding the highest posts. But the *jus suffragii* was in most cases a delusion. The country voters, especially from the more distant parts, could not and as a matter of fact did not attend the Roman *comitia*, except upon the rarest of occasions and under the stress of some urgent pressure. This was one of the rocks on which Cicero's ideal policy of a *consensus Italiae* was wrecked. That the *populus Romanus*, which made the laws and was supposed to govern the Empire, was an increasingly demoralized urban rabble was a danger which political reconstruction alone could meet. That the larger *populus Romanus*, scattered up and down the towns of Italy, were members of the state organism, without precise functions or definite limitations of competence, was a disorder which a general municipal reform might mend.

This was the object of Caesar's Lex Julia Municipalis. It

[2] In the fragment of the Lex Julia Agraria we have the phrase, *qui hac lege coloniam deduxerit, municipium praefecturam forum conciliabulum constituerit*. This seems to imply that by 59 B.C. a certain number of Italian towns had been 'constituted', that is, had received their *leges datae* (see Bruns, p. 97).

was to supply in the first place a normal type of constitution, primarily for Italian towns, but applicable for extension to the provinces. Minor modifications, and even some survivals, like the title of dictator at Aricia, were allowed to remain, but there was to be a general uniformity as regarded the nature, functions, qualifications, and titles of popular assemblies, senates, and magistrates. The citizens freely elected their own magistrates; the magistrates, whether *quattuorviri*, or two colleges of *duoviri*, with judicial, and aedilician powers, were annual, and had executive, judicial, and financial duties. Out of the official class was formed the municipal *curia* or senate, usually one hundred in number, and holding their position for life. Each Italian town was, *mutatis mutandis*, a miniature Rome. They were self-governing municipalities, dependent of course in the last resort on the central sovereign authority, of which they were still in theory, though no longer in practice, participants. There were no vexatious interferences with local concerns. There was a respectable municipal career, with specific duties and privileges, open to all, and to the few the chances of imperial promotion. It need hardly be said that no municipal scheme, however statesmanlike, could guarantee the regeneration of Italy. Whether these municipalities would flourish or dwindle would depend upon character, economic conditions, and environment generally. With Caesar's work in dealing with this environment we are not here concerned, but at any rate, as far as political machinery could forward the development of Italy, they ought to have had a good start.

But what is as significant and important as anything else in the law is the fact that municipal regulations for Rome itself are included in it. In this way Caesar realized and embodied in this law the principle, implicit since the Social War, that Rome, as a city, was only one, though of course the most important, of the Italian municipalities. To a very large extent of course this involved that the Roman magistrates were municipalized. This naturally could never be completely the case with the consuls, as presidents of the Senate, or with the praetors, as heads of the *jus civile*. Even the lower Roman magistracies too were stepping-stones to imperial functions, and so stood on a different footing

from even the highest municipal posts, which in themselves were not. But from this time the daily routine work of all must have been mainly municipal.

How much of the law had special reference to Rome we cannot tell. But it no doubt was, as its name implies, a municipal and not a constitutional measure. All such matters, therefore, as the composition and functions of the Senate, the qualifications and election of magistrates, the judicial system and the competence of the *comitia*, though, as we know, all these were modified by Caesar, would fall outside the scope of this law. But one of the crying evils under the later republican régime had been the inadequacy of these municipal arrangements, the policing of the city, its protection against fire, the charge of the streets, the regulation of traffic, the care of public buildings and open spaces, the machinery of the corn distribution, the oversight of *collegia*, and many cognate details. In fact, in the case of Rome the object of Caesar was municipal reform rather than the regulation of a municipal constitution.

THE LAW

Verses 1–19. The first nineteen verses form the concluding portion of regulations as to the corn distribution. This, since the reckless measure of Clodius, must have been not only a ruinous financial drain, but an unmitigated cause of disorder and confusion, and had led for obvious reasons to wholesale emancipations of city slaves. What Caesar did is briefly described by Suetonius (Caes. 41): 'Recensum populi nec more nec loco solito sed vicatim per dominos insularum egit; atque ex viginti trecentisque milibus accipientium frumentum e publico ad centum quinquaginta retraxit; ac ne qui novi coetus recensionis causa moveri quandoque possent, instituit, quotannis demortuorum in locum ex iis, qui recensi non essent, subsortitio a praetore fieret.' No doubt the law contained details with regard to this *recensus*, which was to be limited to 150,000 persons, carefully selected on grounds of civic rights, respectability, and need. For the future, all those in each year who wished their names to be submitted to the *subsortitio* had to make a declaration of

their circumstances and claims to the specified magistrates. The terms of the declaration are unfortunately lost, and the extant clauses merely specify the magistrates, order the list of applicants for inclusion among the *recensi* to be duly published, and forbid under penalty of a heavy fine any corn to be given to these applicants previous to the *subsortitio*.

Verses 20–82. These verses sufficiently explain themselves. They deal with the duties of the aediles and other officials subordinate to them in connexion with the maintenance, cleansing, and repair of the streets and roads, urban and suburban; the restriction of heavy traffic during the day time, except on certain occasions and for special purposes; the reservation of all open spaces and porticoes for the use of the public, except in certain specified cases. Probably other clauses dealt with other aedilician duties, such as supervision of the markets (Ann. III. 52, and XIII. 28) and charge of the fire brigades. The *aediles cereales* were not created by Caesar till the following year. The local distribution of the urban districts between the four aediles was no doubt a new arrangement, as it was characteristic of Caesar's methods to fix and define the responsibility of all officials. The *iiii viri viis in urbe purgandis* formed one of the minor colleges included under the general term *vigintiviratus*, some post under which was from the time of Augustus but preliminary to the senatorial career. These officials appear on inscriptions as *iiii viri viarum curandarum*, and when Augustus took up the *cura viarum*, were subordinate to the *curatores viarum* instead of to the aediles. The drastic method of dealing with inert property owners by publicly contracting for the work required, and making them responsible to the *aerarium*, is one which might perhaps be applied by modern municipalities more widely than it is. Caesar had no experience of traction engines, and would probably have disallowed them, even if building materials for the temples of the immortal gods had had to come in more slowly. It may be assumed that, *mutatis mutandis*, similar provisions were in force in the other towns, though they may have been left to the local authorities.

Verses 83–158. The law now passes to the municipal towns in Italy. Unfortunately only a very few of the clauses survive.

They are concerned with the highest magistracies, the senates, and the census. With regard to the magistracies, however, we only get certain disqualifications, one of which, insufficient age, may be got over by specified service in a legion. This last point was modified in detail after Augustus had organized the auxiliary service, and inscriptions abundantly testify to the fact that municipal honours were usually preceded by service in the *cohortes* and *alae*. With regard to the senates, too, we get no account of their functions, but an important and interesting list of disqualifications, corresponding very closely with the grounds of *infamia*, as specified by the jurists. There is also a clause forbidding all supernumerary appointments to the senate, thereby making its number a fixed one. The census clauses provide for a census being taken in the same year in which a census is ordered in Rome, the local results having to be delivered to the Roman census officials in time for incorporation therein.

Verses 159–63. This clause has relation, as fully explained in the note ad loc., to *leges datae* or charters drawn up for the Italian communities, already enfranchised after the Social War, by commissioners sent out for the purpose in accordance with a special law. All regulations, alterations, or corrections so made, up to a certain date, are prospectively ratified by this clause.

THE TITLES OF THE TOWNS

The towns for which the regulations of this law are intended are described as coloniae, municipia, praefecturae, fora, and conciliabula.[3] The explanation of these terms, as used in Caesar's time, will involve a brief historical retrospect.

Almost from the first in the case of Rome, the conception of absolute *αὐτονομία*, as proper to the city state, tended to be less clear cut and precise than it was in Greece. The prime cause of this tendency is to be found in the membership of Rome in the league of thirty Latin cities. There were points in the

[3] We find exactly the same list in the fragment of the Lex Julia Agraria of 59 B.C.

relations between these cities, which, though far from amounting to a common citizenship, in a way forecasted the common citizenship of later times. The earliest extension of the Roman *civitas* outside Rome took place in one of two ways. Sometimes a number of Roman citizens were sent out and settled either in an existing town or in a newly founded one, retaining in both cases their rights as Roman citizens, but forming distinct communities, *coloniae*. In course of time a large number of these *propugnacula imperii*—for they were mostly on strategic sites—grew up, and many were added to the same category through social causes. In the second place, Rome frequently found it the readiest way of dealing with conquered communities, to incorporate them in her own citizenship. But the inhabitants of these towns were seldom, perhaps never, full Roman citizens. They were half citizens, or passive citizens, or *cives sine suffragio*. While possessing the rights of *commercium* and *connubium* with Rome, they had not the *jus suffragii* or the *jus honorum*. They were *municipes*, i.e. they were subject to all the burdens without all the privileges of the *civitas*. Their towns were *municipia*.

But both *coloniae* and *municipia*, as falling within the Roman *civitas*, were not themselves *civitates*, and were therefore subject to the jurisdiction of the *praetor urbanus*. As he could not exercise this jurisdiction in person, he nominated every year *praefecti jure dicundo*, to act as his representatives in these communities. From this point of view, therefore, originally both *coloniae* and *municipia* were also *praefecturae*.

But there were at first distinctions within both these categories.

Among the colonies, some, either from the first, or before long, consisted wholly of full Roman citizens. Others were based upon a substratum of original inhabitants, who had at best the imperfect citizenship. In all probability this distinction was the dividing line between those which could and those which could not be called *praefecturae*. And the latter class came gradually, by special grants of the full *civitas*, to be included under the former, and when that took place, the colonies no longer received *praefecti* from the praetor, but had their own jurisdiction, exercised by their own magistrates. A single

instance must suffice. Puteoli was at first according to Festus a *praefectura*, but by 105 B.C. it was under its own *duoviri* (C. I. L. I. 877). Before the Social war no doubt *coloniae* and *praefecturae* were exclusive terms.

With regard to the *municipia*, the case is more complicated, and the grades more numerous. At first all *municipia* were half burgess communities, and at that stage must all have been *praefecturae* as well. But while some of these *municipia* were allowed to retain their old constitutional machinery in the shape of assemblies and magistrates, as before their incorporation in the Roman *civitas*, and received *praefecti* for judicial purposes only, others were *res publicae* only in a more vague sense, had no magistrates of their own, and were administered entirely by the *praefecti* sent out every year from Rome. These, therefore, were *praefecturae* in a somewhat narrower sense. A good example of this class is Anagnia after 306 B.C. (Livy IX. 43) and Capua for some time after the second Punic war. Again, from 318 B.C. after the Latin wars were over (Livy IX. 20) four *praefecti jure dicundo*, at first nominated by the praetor, but later elected annually by the *comitia tributa*, were sent out to administer justice in the ten Campanian towns, Capua, Cumae, &c., enumerated in the passage of Festus quoted below. These also, therefore, were *praefecturae* in the narrower sense. Among the other *municipia*, the *civitas sine suffragio*, which originally accounted for the name, was gradually replaced by the complete *civitas*; the towns became *municipia civium Romanorum*; the term *municipium* lost its old sense of imperfection, and acquired its later meaning of self-governing community, and the term *praefectura* became applicable to fewer and fewer of them, since *municipia civium Romanorum*, like colonies, had their own jurisdiction.[4]

[4] It may be useful to quote the passage in Festus, p. 233, about *praefecturae*: 'Praefecturae eae appellabantur in Italia, in quibus et jus dicebatur et nundinae agebantur, et erat quaedam earum respublica, neque tamen magistratus suos habebant, in quas legibus praefecti mittebantur quotannis qui jus dicerent. Quorum genera fuerunt duo: alterum, in quas solebant ire praefecti quattuor e viginti sex virum numero populi suffragio creati in haec oppida: Capuam, Cumas,

That the Campanian towns up to and beyond the Social war were still *praefecturae*, is clear from the fact that the *praefecti jure dicundo Capuam, Cumas*, &c., belonged to the *xxvi viri* till Augustus. How many other towns still retained the name we do not know. At any rate, after the Social war the terms *coloniae, municipia*, and *praefecturae* became the permanent descriptions of the towns bearing them at that time, although they no longer connoted differences of privilege, but only historical distinctions. In addition to this, all the newly enfranchised Italian towns were, roughly speaking, classed under one or other of these three heads. Possibly the Latin colonies now became Roman *coloniae*, while most of the rest became *municipia civium Romanorum*. It is quite possible, though it cannot be proved, that some of the less important towns were classed among *praefecturae*. What is clear is, as proved by such passages as Cic. pro Sest. 14. 32; in Pis. 22. 51, that in the Ciceronian period Italian towns fell under these three heads. But we find from this law that it was not an exhaustive classification. *Fora* and *conciliabula* are added to the list. These names would seem to go back to the primitive, pre-urban, cantonal organization, when a number of *pagi* had some central meeting-point where the tribal council assembled or the tribal judge had his tribunal. We have occasional mention of these *fora* and *conciliabula* in Livy. Thus in 212 B.C. the Senate sends out two sets of commissioners, to report on the number of men liable to military service in *pagis forisque et conciliabulis*, within and beyond fifty miles of Rome (25. 5). Again, in 180 B.C. the Senate sends out two praetors to conduct a *quaestio veneficii* in the *fora* and *conciliabula* (40. 37). These were clearly little rustic towns within the *ager Romanus*, managing no doubt their local affairs, but not yet recognized as *respublicae*. No doubt there were similar survivals of this pre-urban condition all over Italy, and after 90 B.C. all these smaller townships had the

Casilinum, Volturnum, Liternum, Puteolos, Acerras, Suessulam, Atellam, Calatiam: alterum, in quas ibant, quos praetor urbanus quotannis in quaeque loca miserat legibus, ut Fundos, Formias, Caere, Venafrum, Allifas, Privernum, Anagniam, Frusinonem, Reate, Saturniam, Nursiam, Arpinum, aliaque complura.'

Roman *civitas*. Originally depending on some larger neighbouring town, within whose territory they lay, they became more and more independent, until we find them in the present law classed side by side with the municipalities proper.

But, for all that, they are still clearly not on the same footing. They had indeed their own senates, since, in the clauses referring to the *decuriones* (vv. 83 and 119), they are mentioned. But they had no *duoviri* or *quattuorviri*, and they did not conduct their own census, for in the clauses dealing with these matters they are significantly absent (vv. 89 and 108). Their magistrates were quite possibly still only *magistri*, included under the *aliove quo nomine* of verse 83, and certainly therefore without jurisdiction. From this point of view they were *praefecturae* of some neighbouring town.

THE MAGISTRATES

The magistrates were all freely elected by the citizens in their popular assemblies. The fiction of attendance at the Roman Comitia was now given up, though Augustus, according to Suetonius (Aug. cap. 46), had at one time the idea of allowing the colonies to send their votes in writing through the local authorities, in time for the elections in Rome. The highest magistrates are described as *queiquomque duovirei quattuorvirei erunt aliove quo nomine magistratum . . . habebunt*. In many towns, especially perhaps in colonies, they were *duoviri jure dicundo*, subordinate to whom were two aediles, or *duoviri aedilicia potestate*. In others there were *quattuorviri*, sometimes all *jure dicundo*, sometimes all *aedilicia potestate*. The precise titles vary indefinitely in inscriptions, and sometimes, as we have seen, titles like that of dictator still survive. But generally it may be said that this supreme municipal college combined the judicial functions of a Roman praetor with the administrative duties of aediles. Every fifth year, however, either all four or two of the number were called *duoviri* or *quattuorviri quinquennales*, and had to take the census, as provided in verse 135 and foll. No doubt most of the duties of these municipal magistrates were of an aedilician character. But their judicial functions were important. These were both civil and criminal. In both spheres, it was in

the last resort subordinate to the supreme jurisdiction of the consuls and praetors, and it was these magistrates who had the right, of course under specified conditions, *vocare ex Italia cum quibus lege agi posset* (Tac. Ann. XIII. 28).

Again, the financial administration, though shared with the *decuriones*, was in the management of the magistrates. As *quinquennales* in the census year, they had to make or renew or alter public contracts, and they must have had the control of the municipal *aerarium*, perhaps directing the *praefecti aerarii* who are found in many towns. It was this branch of municipal administration which later on fell into deplorable mismanagement.

THE DECURIONES

The local senate or *curia* usually consisted of 100 members, called *decuriones* or *conscripti* or sometimes senators. There was always a property qualification, and the office was held for life. There was a *lectio senatus* in every fifth year, conducted by the *quinquennales*. Other things being equal, i. e. if none of the disqualifications enumerated in verse 108 and foll. had supervened, the surviving *decuriones* were added to the new album. Then came those qualified for election by the tenure of office from the aedileship upwards, for as magistrates they had only had a seat in the senate during their year of office. Lastly, if any vacancies still remained, they were filled from those possessing the requisite census.

With the duties of the *decuriones* and the relations between them and the magistrates we shall become more familiar when we reach the important Spanish charters for colonies and Latin towns. It is enough to say here that these Italian municipalities were thoroughly timocratic or oligarchical, and that the senates were the real governing bodies. The *ordo Augustalium*, so marked a feature in these towns at a later date, was a subsequent development, intended to give a semi-official position to the middle-class citizens. I will only refer on this point to Arnold's *Roman Provincial Administration*, or Marquardt's *Römische Staatsverwaltung*, Vol. I.

Of the electoral functions of the *comitia* or *plebs*, we shall get a clearer view in the Spanish communities.

THE LEX JULIA MUNICIPALIS

If a person, required by this law to make the aforesaid declaration before a consul, shall be absent from Rome at the time when the declaration ought to be made, then his agent or representative shall in his behalf make the same declaration before a consul, in the same manner and on the same days as the said person would be required by this law to make the declaration if he were in Rome. 1 2 3

If a person, whether male or female, required by this law to make declaration before a consul, shall be under legal wardship, then his or her legal guardian shall in his or her behalf make the said declaration before a consul, in the same manner and on the same days as the said person would be required by this law to make the declaration if he or she were not under legal wardship. 4 5 6

If the consul, before whom the said declaration is required by this law to be made, shall be absent from Rome, then any person required to make the declaration shall make it before the praetor urbanus, or, if he shall be absent from Rome, before the praetor peregrinus, in the same manner as he would be required by this law to make the declaration before the consul if he were in Rome. 7 8 9

If neither the consul nor the said praetors, before whom the said declaration is required by this law to be made, shall be in Rome, then a person required to make the declaration shall make it before a tribune of the plebs, in the same manner as he would be required by this law to make the declaration before a consul or the praetor urbanus or the praetor peregrinus if they were in Rome. 10 11 12

In the case of every declaration required of any person by this law, it shall be the duty of the magistrate before whom the declaration is made, to see that the name of the person, his declaration, and its date shall be entered in the public records; 13 14

he shall further see that the entries made by him in the said public records shall be copied in black letters on a white board and exposed in the forum, during the greater part of every day, at the time and place in which corn is distributed to the people,[1] so that it may be plainly read from the level of the ground.

Whosoever shall distribute corn or cause others to distribute corn to the people, shall neither give corn nor order nor permit corn to be given to any of those persons whose names shall have been given in to a consul or praetor or tribune, and in accordance with this law placed in the list upon the notice board. Whosoever, contrary to this law, shall give corn to any such person, shall be condemned to pay a fine to the people of 50,000 sesterces for every bushel of wheat so given, and shall be sued at will by any person for the said sum.

As regards the roads which are or shall be within the city of Rome or within one mile of the city of Rome; from the point where continuous habitation ends it shall be the duty of every person, before whose tenement any such road shall run, to maintain that road, at the discretion of the aedile to whom in accordance with this law that portion of the city shall belong. And it shall be the duty of the said aedile to see that every such person required by this law to maintain any such road running before his tenement shall maintain the said road at his discretion; and that no water shall stand in such places whereby the convenient use of the road by the public may be impaired.

It shall be the duty of the aediles, whether curule or plebeian, who are now in office, or who shall be appointed or created or shall enter on the magistracy after the passing of this law, within the five days next following upon their designation to or their entrance upon the said magistracy, to arrange between

[1] The first six clauses, which are of course incomplete, contain regulations with regard to the corn distribution in Rome. The names of all persons making the required declaration would have to be subjected to a *subsortitio*, and the consul or other magistrate receiving the declaration is forbidden under penalty to distribute corn to any of these persons previous to this *subsortitio*. This would no doubt appear plainly if we had the earlier clauses, in which mention must have been made of the *subsortitio*. Cf. Suet. Caesar 41 and Introduction, p. 141.

themselves, either by agreement or by lot, in which part of the city each of them shall see to the repairing and paving of the public roads within the city of Rome and within one mile of the city of Rome, and shall have the special charge of such business. On every aedile, to whom by this law any such part of the city shall belong, shall be laid the special charge of repairing and maintaining the roads in all places within that part in such manner as this law shall direct.

Where a road lies or shall lie between a sacred temple or a public building or a public space and a private tenement, it shall be the duty of the aedile to whom that part of the city belongs in which such sacred temple or public building or public space is situate, to contract for the maintenance of one-half of the said road.

If any person, required by this law to maintain a public road in front of his tenement, shall fail to maintain such road to the satisfaction of the aedile concerned, then it shall be the duty of the aedile at whose discretion the road ought to be maintained to contract for the maintenance of such road. Furthermore, the said aedile, not less than ten days before he concludes the contract, shall have it publicly notified in the forum in front of his tribunal, the description of the road to be contracted for, the day fixed for the contract, and the name of the person before whose tenement the road is situate. He shall further cause due notice to be given to the said person and to his agents at their respective houses, of his intention to contract for the road and of the day fixed for the contract. The said contract shall be concluded openly in the forum by means of the urban quaestor or the president of the aerarium for the time being. The sum paid to the contractor for the said road, and the proportion of that sum falling on the several persons whose tenements abut the road, according to the length and breadth of the road in front of their several tenements, the urban quaestor or the president of the aerarium for the time being shall cause to be entered in the public accounts of money owing to the people.[2]

[2] Money owing to the people is *pecunia facta* and could not be exacted from the debtor until thus entered in the public accounts. See Tac. Ann. XIII. 28.

For such sums he shall in all good faith make the several parties
41 legally responsible to the person contracting for the maintenance
42 of the said road. If the person so bound over shall, within the next thirty days after he or his agents are notified of the legal
43 obligation, fail to pay the money or to satisfy the party to
44 whom he is made responsible, then such person shall be bound to pay the sum for which he was made responsible, and in addition half the same sum to the party to whom he shall be bound over, and for such purpose the magistrate to whom application shall be made in the matter shall assign a judex or judices in
45 such manner as a judex or judices would be assigned in a suit for the recovery of a loan.

46 Where the maintenance of a road is by this law to be assigned
47 to a contractor, the aedile responsible for the same shall contract for the maintenance of the said road through the urban quaestor, or the president of the aerarium for the time being, in such
48 manner that the road shall be maintained to the satisfaction of the person who shall have had charge of the said contract. The
49 urban quaestor, or the president of the aerarium for the time being, shall see that the sum agreed upon for the contract of each road shall, according to the terms of the agreement, be given and assigned to the party contracting for that road or his heir.

50 The aediles, the iiii viri[3] for cleansing the roads within the city of Rome, and the ii viri[4] for cleansing the roads outside the
51 city and outside one mile from the city, who shall be in office for the time being shall, notwithstanding any enactments in
52 this law, see to the cleansing of the public roads, and have full power in such matter in all respects as they are or shall be required by the laws or plebiscita, or by the decrees of the Senate.

53 Any person, before whose tenement a footpath shall be situate,

[3] These *iiii viri vieis purgandeis* or *viarum curandarum* held one of the offices comprised under the term *vigintiviratus*. Later on this became one of the stepping-stones to the senatorial career.

[4] These *ii viri vieis extra urbem purgandeis* are alluded to in the Lex Agraria (v. 28), and are often found on inscriptions. Whether they continued after Augustus assumed the *cura viarum* is uncertain.

shall be required to keep such footpath fitly paved along its whole length where it abuts on the said tenement, with stones whole and closely compacted, to the satisfaction of the aedile to whom by this law the charge of roads in that part shall appertain.

In the roads which are or shall be within the city of Rome, or within the limit of continuous habitation, no person, after the first day of January next following, shall be allowed in the daytime, after sunrise or before the tenth hour of the day, to lead or drive any heavy wagon; except where it shall be requisite, for the sake of building the sacred temples of the immortal gods or carrying out some public work, to draw or convey material into the city, or where, in pursuance of a contract for the demolition of buildings, it shall be requisite for public ends to carry material out of the city or away from such places, and in cases and for objects for the which it shall be lawful for specified persons and for specified causes to lead or drive such wagons.

On all days when the Vestal Virgins, the rex sacrorum, and the flamens shall be required to ride in wagons in the city for the sake of the public sacrifices of the Roman people, or when wagons shall be required for a triumphal procession on the day fixed for such triumph, or for games which shall be publicly celebrated within the city of Rome or within one mile of the city, or for the procession at the Ludi Circenses, for all such causes and on all such days it shall be lawful for wagons to be led or driven in the city in the daytime, notwithstanding any enactments in this law.

It shall be lawful for wagons, brought into the city by night, drawn by oxen or horses, if returning empty or conveying away refuse, to be in the city of Rome or within one mile of the city after sunrise in the first ten hours of the day, notwithstanding any enactments in this law.

As touching all public spaces and public porticos within the city of Rome and within one mile of the city of Rome, the special charge of which shall by law appertain to the aediles, or to those magistrates who shall superintend the cleansing of the roads and public spaces within the city of Rome and within one

mile of the city of Rome, no person shall in such public spaces or such porticoes have any building or construction carried out, or
71 shall occupy such public space or portico, or shall keep any of the said places blocked or closed, whereby the public shall be deprived
72 of free access to and free use of the said public spaces and porticoes, except in the case of such persons and in such manner as shall be allowed and permitted by the laws or plebiscita or by the decrees of the senate.

73 Wherever, under the terms of a contract made or to be made by a censor or any other magistrate for the usufruct of the
74 public revenues or the performance of public services, the legal use and enjoyment of certain places or the legal duty to uphold such places has been assigned to the persons who shall have
75 accepted the aforesaid contract for the said usufruct of public revenues or the said performance of public services, it shall be lawful for such persons to use and enjoy the said places
76 in such manner as shall be allowed by the terms of the contract in all good faith, notwithstanding any enactments in this law.

77 It shall be lawful for all persons who shall celebrate games in
78 Rome or within one mile of the city of Rome, for the purpose of such games, to set up or erect a stage or platform or other
79 things required for such games within a public space, and to make use of a public space on the days when such games shall be celebrated, notwithstanding any enactments in this law.

80 All clerks or secretaries in attendance on magistrates shall at
81 the command of the magistrates on whom they respectively attend and for purposes of such attendance make use of public spaces, notwithstanding any enactments in this law.

82 Public slaves shall make use of such places as shall be assigned them by the censors for the purpose of habitation or otherwise, notwithstanding any enactments in this law.

83 [5] It shall not be lawful for the ii viri or iiii viri in a municipium or colonia or praefectura or forum or conciliabulum of
84 Roman citizens, or for those who under any other title [6] shall

[5] The law now passes from regulations primarily concerning the city of Rome to the Italian colonies, *municipia*, and other communities.

[6] This would cover such survivals as a dictator or praetor or aedile, all

hold a magistracy or competence conferred by the vote of those who belong to such municipium or colonia or praefectura or forum 85
or conciliabulum, to elect directly or in substitution for another, to co-opt or to cause to be proclaimed any person as a member of the senate or decuriones or conscripti within the aforesaid com- 86
munities respectively, except in the place of one deceased or 87
condemned by a court, or of one who shall have confessed that he is prohibited by this law from being a senator or decurion or 88
conscript in such community.

No person who is or shall be less than thirty years of age, 89
shall, after the first day of January in the second year from this date, stand for or accept or hold the office of iivir or iiiivir or any other magistracy in a municipium or colonia or praefectura,[7] 90
unless he shall have served three campaigns on horseback in 91
a legion, or six campaigns on foot in a legion, such campaigns being served in a camp or a province during the greater part of 92
each several year, or during two consecutive periods of six months, which in any year may be counted as equivalent to two 93
years, or unless he shall be entitled by the laws or plebiscita or by virtue of a treaty to exemption from military duty, whereby 94
he is freed from compulsory service. Furthermore, no person who practises the trade of auctioneer or beadle or undertaker shall, so long as he practises[8] such trade, stand for or accept or have or hold the office of iivir or iiiivir, or any other magistracy 95
in a municipium or colonia or praefectura, or become a senator 96
or decurion or conscript or declare his vote as such,[9] within such

of which titles are found long after the date of this law. Possibly, too, the same phrase would cover the *magistri* of the *fora* and *conciliabula* which certainly had senates but almost certainly not *duoviri* or *quattuorviri*. The object of this clause is of course to limit the number of *decuriones* to 100.

[7] The omission here of *fora* and *conciliabula* seems fairly conclusive that these smaller places did not possess *duoviri* or *quattuorviri*.

[8] This is the point alluded to by Cicero in a letter written in Feb. 45 B.C. (ad fam. 6. 18. 1): 'statim quaesivi e Balbo per codicillos quid esset in lege. Rescripsit eos qui facerent praeconium vetari esse in decurionibus, qui fecissent non vetari.'

[9] The acting magistrates for the year, *ii viri* or *iiii viri*, would have a seat and a vote among the *decuriones* but were not necessarily members of the Senate.

97 community. Whoever of the aforesaid persons shall act in contravention of this clause shall be condemned to pay to the people the sum of 50,000 sesterces, and shall be sued at will by any person for that amount.

98 It shall not be lawful for any magistrate in a municipium or
99 colonia or praefectura, who shall after the first day of July next following convene the comitia for the regular or supplementary
100 elections to the duovirate, quattuorvirate, or any other magistracy, to declare the election to any such office, or to order the election to be declared, of any person who is or shall be less than thirty
101 years of age; unless such person shall have served three campaigns on horseback in a legion, or six campaigns on foot in a legion, such campaigns being served in a camp or province
102 during the greater part of each several year, or during two consecutive periods of six months, which may be allowed to count in
103 each case as two years out of his time, provided that it be so allowed by the laws or plebiscita, or unless he shall be entitled to exemption from military duty by the laws or plebiscita, or by
104 virtue of a treaty whereby he is freed from compulsory service; it shall also be unlawful for the aforesaid magistrate, knowingly
105 and with wrongful intent, to declare the election to the duovirate, quattuorvirate, or any other magistracy, of any person who practises the trade of auctioneer or beadle or undertaker, so long as he practises such trade, or to elect such person, directly or in sub-
106 stitution for another, into the senate or the number of the decuriones or conscripti; or to call on such person for his vote or
107 to order him to give such vote by speech or voting tablet.[10] Whosoever shall act in contravention of this clause shall be condemned to pay to the people the sum of 50,000 sesterces, and shall be sued at will by any person for that amount.

108 In every municipium, colonia, praefectura, forum, or conciliabulum of Roman citizens, it shall be unlawful for all such persons as shall be hereafter mentioned, within such com-
109 munities, to be in the senate or among the decuriones or con-
110 scripti, or to vote by speech or voting tablet in the said order;

[10] This seems to be the distinction between *sententiam dicere et ferre.*

to wit: such persons as shall have been convicted of theft committed by themselves,[11] or shall have compounded for the theft with the injured party; or those persons who have been or shall 111
be condemned in an action for trust, partnership, guardianship, agency; for injurious conduct or for fraudulent intent, or those persons who have been or shall be condemned under the Lex 112
Plaetoria,[12] or for action committed by them contrary to the said law;[13] or those persons who have been or shall have been bound by oath[14] with a view to fighting as gladiators; or those 113
persons who have or shall have certified their insolvency[15] before the praetor, or certified their solvency to escape addictio for debt; or those persons who have or shall have given notice to 114
their sureties or creditors to the effect that they are unable to pay in full, or have or shall have compounded to that effect with the

[11] That is, as opposed to a theft committed by a slave for whom his master would be responsible; see note on Lex Rubria, Atestine Fragment, clause A.

[12] We gather from Cicero (De Officiis III. 15. 61) that this was a law dealing with fraudulent conduct on the part of *curatores* towards those under age. 'Circumscriptio adolescentium lege Plaetoria (vindicata)'. Wordsworth quotes Plautus, Pseudulus I. 3. 69, proving that the law was an old standing one.

[13] If it were made an argument against a claimant, for example in a case of *certa pecunia*, that he had violated the Lex Plaetoria and if the praetor accepted the argument, the person would be, under the terms of this law, disqualified for the senate.

[14] *Auctoratus* = bound by the military oath; so *exauctorari* in Tac. Ann. I. 36 is 'freed from the military oath', those who hired themselves out to a *lanista* had to take an *auctoramentum*; *uri, vinciri, ferroque necari*; cf. Hor. Sat. II. 7. 59 'quid refert, uri virgis ferroque necari auctoratus eas?'; also Juv. Sat. XI. 8 'scripturus leges et regia verba lanistae'.

[15] *Bonam copiam abjuravis—bonam copiam juravit.* The apparent difficulty is that a declaration of insolvency and of solvency are both causes of *infamia*. The second case is probably explained by a citation from the Lex Poetilia in Varro L. L. VII. 105 'ut omnes qui bonam copiam juraverunt, ne essent nexi sed soluti': i.e. a person, *addictus* to his creditor, or imprisoned for debt, could secure his freedom by a declaration of solvency. But a declaration made for such purpose involved *infamia*. From Cicero ad fam. IX. 16. 7 it appears that *ejurare bonam copiam* was equivalent to *abjurare*.

said sureties or creditors; or those persons in whose behalf such obligations have been or shall be undertaken or incurred;[16] or those persons whose property has been or shall be seized or publicly sold in accordance with the edict of those magistrates invested or to be invested with judicial authority,[17] except in cases where the seizure or public sale took place at the time when the said persons were under legal wardship, or were absent on the public service, provided that such absence was not due to false pretence or wrongful intent; or those persons who have been or shall be condemned by a criminal court in Rome, whereby their residence in Italy is rendered unlawful, and are not or shall not be restored to their former status; or those persons who have been or shall be condemned in a criminal court within the municipium, colonia, praefectura, forum, or conciliabulum[18] to which they shall belong; or those persons who have been or shall be held to have brought an accusation or done any act for the purpose of making a false charge or from collusion; or those persons who for any dishonourable cause have lost or shall lose their rank in the army; or whom a general for such cause has cashiered or shall cashier; or those persons who have received or shall receive money or any other reward for bringing in the head of a Roman citizen;[19] or who has or shall have prostituted his person; or those persons who shall be trainers of gladiators, or who keep a gladiatorial school; or maintain a public brothel.

[16] That is, by *sponsores*.

[17] These magistrates, as we know from the Lex Rubria, would be the *duoviri* or *quattuorviri jure dicundo* or *praefecti* acting in their stead, though in special cases the authority of the praetor in Rome might be included, as where *missio in possessionem* was involved. The seizure and sale of property implies not only insolvency but actual bankruptcy.

[18] The criminal court could of course be held even in a *forum* or *conciliabulum*, but this does not imply that these smaller places had their own *duoviri jure dicundo*. On the contrary their courts would be presided over by *praefecti* sent from larger neighbouring communities. The same explanation would of course apply to the phrase in the Lex Julia Agraria: *Magistratus qui in colonia municipio praefectura foro conciliabulo jure dicundo praeerit* (Bruns, p. 96).

[19] This can only, as Mommsen points out, refer to any surviving agents of Sulla employed in his proscriptions.

Whosoever of the aforesaid persons [20] shall in contravention of 124
this law take his place in the senate or among the decuriones or
conscripti within a municipium, colonia, praefectura, forum, or 125
conciliabulum, or shall declare his vote in such assembly, shall be
condemned to pay to the people the sum of 50,000 sesterces, and
shall be sued at will by any person for that amount.

As touching all such persons aforesaid, to whom within a 126
municipium, colonia, praefectura, forum, or conciliabulum it is 127
forbidden by this law to become a senator or decurio or con-
script, or to vote by speech or voting tablet in that order; it
shall not be lawful for any magistrate who shall, within any of 128
the said communities, convene the senate or the decuriones or
conscripti, knowingly and with wrongful intent, to order any
such person to enter the senate or sit with the decuriones or
conscripti, or to call upon him for his vote in that body, or to 129
order him to give such vote by speech or voting tablet. It shall
further be unlawful for any person, who within such municipium, 130
colonia, praefectura, forum, or conciliabulum shall hold by the vote
of the citizens the highest magistracy, to allow, knowingly and 131
with wrongful intent, any of the aforesaid persons to enter the
senate or sit with the decuriones or conscripti or to be present in
or to declare or offer a vote in the said order; or to allow the 132
candidature of any such person at the comitia, or assembly; [21]
and if such person shall, notwithstanding and contrary to this
law, be elected in such comitia or assembly, it shall be the duty 133
of the said magistrate to declare such election to have been made
contrary to this law, and to prevent such person from sitting at 134
the games or being present at a public banquet with the senators
or decuriones or conscripti.

It shall not be lawful for any persons who within a munici- 135
pium, colonia, praefectura, forum, or conciliabulum are forbidden 136
by this law to be senators or decuriones or conscripti, to stand
for or to hold the office of duovir or quattuorvir or any other 137

[20] This list of persons excluded from the senate closely corresponds with the list of *infami*, Dig. III. 2.

[21] It is clear from this that the decuriones as well as the magistrates were elected in the popular assembly, though *cooptatio* appears to have been also possible.

magistracy or competence from which he would pass into the
138 said order, nor to sit in the space assigned to senators, decuriones,
139 or conscripti at the games or gladiatorial contests; nor to be present at a public banquet; nor shall any person, elected or
140 returned contrary to this law, rank as duovir or quattuorvir, or hold any magistracy or competence within such communities. Whosoever shall act in contravention of this clause shall be con-
141 demned to pay to the people the sum of 50,000 sesterces, and shall be sued at will by any person for that amount.
142 In all municipia, coloniae, or praefecturae of Roman citizens,
143 such as are or shall be within Italy, those persons who shall hold the highest magistracy or competence within such communities [22] shall, at the time when the censor or any other
144 magistrate at Rome shall take a census of the people, and within
145 the sixty days next following upon his knowledge of such census being taken at Rome, proceed to take a census of all those
146 persons belonging to their respective municipia, coloniae, or praefecturae who shall be Roman citizens; from all such persons, duly sworn, they shall receive their gentile names, their praeno-
147 mina, their fathers or patrons, their tribes, their cognomina, their age, and a statement of their property, in accordance with the
148 schedule set forth by the magistrate about to take the census of the people at Rome; all such particulars they shall cause to be
149 entered in the public records of their respective communities, and shall despatch the said papers to the officials then taking the census at Rome by the hands of delegates, selected for that
150 purpose by a majority of the decuriones or conscripti present at
151 a meeting convened for such selection; they shall further see
152 that, within sixty days of the date on which the aforesaid magistrates shall have completed the census of the people at Rome, the said delegates shall reach the said magistrates, and deliver

[22] In the census year, either all or two of the *iiii viri* held the title of *quinquennales*. They of course corresponded to the censors at Rome. They are frequently mentioned on municipal inscriptions. It is clear from their omission in the list of communities that the census was not held in the *fora* and *conciliabula*. The inhabitants of these smaller places were included in the census of the larger neighbouring communities.

the papers of their respective municipia, coloniae, or praefecturae. 153
Thereupon, the said censor, or whatever magistrate shall take
the census of the people at Rome, shall, within the five days 154
next following upon the arrival of the said delegates from their
respective communities, receive in all good faith the said census 155
papers delivered by the said delegates; he shall further see
that the particulars contained in the said papers shall be entered
in the public records, and that such public records shall be 156
preserved in the same place with the other records in which the
census of the people is registered and inscribed.

All persons having a domicile in more than one municipium, 157
colonia, or praefectura, and included in the census at Rome, shall
not, notwithstanding any enactments in this law, be included in 158
the census of a municipium, colonia, or praefectura, as this law
directs.

If any person is or has been commissioned by a law or plebi- 159
scitum to frame a constitution for any municipium fundanum [23] 160

[23] *Municipium fundanum*; according to Festus, p. 89, *fundus fieri* was equivalent to being the *auctor* of, in the sense of being bound by. Thus certain communities, using their own laws, could become *fundi*, either of some particular Roman law which they chose to adopt, or of several or of all the Roman laws. So Gellius, speaking of the early period, says: *municipes sunt cives Romani ex municipiis, suis legibus et suo jure utentes, ... neque ulla populi Romani lege adstricti, nisi populus eorum fundus factus est.* We know, too, from Cicero that Latin communities could become *fundi* of Roman laws. 'Innumerabiles aliae leges de civili jure sunt latae; Latini quas voluerunt adsciverunt' (Pro Balb. VIII. 21). Whether a *civitas foederata*, like Gades, could be *fundus* of Roman laws is disputed in the Pro Balbo. The accuser of Balbus disputed his citizenship on the ground that Gades had not become *fundus* of the Lex Gellia-Cornelia, by which the citizenship had been conferred on Balbus and others. Cicero's reply is that nothing could be *imperitius* than to maintain *foederatos populos fundos fieri oportere.*

After the Social war all the Latin towns and all the *civitates foederatae* in Italy received the Roman *civitas*, and became at once *fundi* of Roman laws. 'Qui fundi populi Romani non facti essent, civitatem Romanam non haberent' (Pro Balb. *loc. cit.*). But apparently the newly enfranchised communities were not recognized as in the full sense Roman colonies or *municipia c. R.* until a commissioner or commissioners had by means of a *lex data* remodelled their constitution in accordance with Roman usage. In the interval perhaps these com-

obeying the laws of Rome, or for the members of such muni-
161 cipium, then, whatever additions, changes, or corrections such person shall have made in such constitution, after the passing of this law, and within the year next following the confirmation of

munities were the *municipia fundana* of this clause. In this case the title would point to a transitional condition. No doubt a good many communities had already received their *lex data*, and passed out of this transitional stage. Others, this clause implies, had commissioners at work at the time when this law was passed. Others again may have been still waiting for their *lex data*. In the last two cases undoubtedly the *lex data* would be based on the Lex Municipalis of Caesar.

I am indebted to Mr. Strachan-Davidson for calling my attention to Mommsen's latest interpretation of this clause. Mommsen had originally considered the clause especially to apply to those communities in Sicily and Spain to which Caesar had granted the *jus Latii*, and to which, on becoming *fundi* of Roman law, or *fundana*, it was desirable by a *lex data* to give a constitution. That constitutions had in the past been given in this way to Sicilian towns is proved by the case of Halaesa, to which in 95 B. C. Claudius Pulcher was sent. He, as Cicero tells us in Verr. II. 49. 122 'adhibitis omnibus Marcellis qui tum erant, de eorum sententia leges Halaesinis dedit in quibus multa sanxit de aetate hominum, ne qui minor XXX annis natus, de quaestu, quem qui fecisset ne legeretur, de censu, de ceteris rebus'. We possess such scanty remains of this law that it seems to me by no means unlikely that it contained regulations for Latin as well as Roman communities, and therefore that the *municipia fundana* of this clause may, as Mommsen once thought, include such Latin communities as those in Sicily and Spain. But the discovery in 1894 of some fragments of the Lex Municipii Tarentini rightly compelled Mommsen to give a wider application to this clause. Tarentum, as we have seen (Introd. to Lex Tarent., p. 102), up to the Social war, had been an amalgamation of the Gracchan colony Neptunia and the Greek *civitas foederata*, and, after the law enfranchising it, no doubt became one of these *municipia fundana*, waiting for its *lex data* to rank as a complete *municipium c. R.* No doubt its *lex data* was antecedent to the Lex Julia Municipalis. It may have been earlier than Cicero's speech pro Archia in 62 B. C. At any rate it seems clear that by 59 B. C. a number of *municipia* and other communities in Italy had received or were receiving their constitutions, since, in the Lex Julia Agraria of that year we get the phrase 'qui h. l. coloniam deduxerit municipium praefecturam forum conciliabulum constituerit'.

It seems to me clear from the present clause (1) that at the time when the Lex Jul. Mun. was passed, a number of commissioners were engaged in framing *leges datae* for these *municipia fundana*, and are here empowered

this law by the people, shall be equally binding upon the members of such municipium as if the said person had made such addi- 162
tions, changes, or corrections at the time when he was first commissioned by law or plebiscitum to frame such constitution ; nor shall it be lawful for any person, by means of his intercessio or 163
otherwise, to render such additions, changes, or corrections void or inoperative or unobserved.

to revise or correct their work in accordance with this law ; and (2) that commissioners, who had already in the preceding period framed such *leges datae* are also empowered to make additions or corrections to them on the lines laid down by Caesar's law during the next year (this follows from the words *quei .... permissus est fuit utei leges .... daret*).

Whether the fragment of the Lex Mun. Tarent. belonged to the original or revised law may be left undecided. Certainly the provisions to prevent the depopulation and dilapidations of the city are more in keeping with the spirit and object of Caesar's régime than with any other.

APPENDIX III

THE TITLES 'LEX RUBRIA' AND 'LEX JULIA MUNICIPALIS'

That 'Lex Rubria' was the title of the law dealing with Gallia Cisalpina has usually been inferred from its use in the formula contained in Cap. 20 of the law (see p. 127). Mommsen, however (*Juristische Schriften*, vol. i, p. 152), is inclined to take a different view. The Lex Rubria, mentioned in the formula, is shown to have been a *lex rogata* from the words *seive id plebeiscitum est*. But Mommsen holds that the Gallic law was more probably a *lex data*. If so, we should of course have to give up the title of Lex Rubria for the partly extant law, and suppose that the law so entitled in the formula, had reference either to the substitution of a *praefectus* for the *duoviri*, or merely to cases of *damnum infectum*. As already indicated on p. 124, I have not accepted this view. As far as internal evidence goes, and there is none other, Mommsen admits that the law might be either *rogata* or *data*, though he suggests not very forcibly that the latter character is more probable 'propter ordinationes minutatim dispositas'. That a *lex data* may apply to a whole province, and not to a single town, and also may bear the name of its author, is of course shown by the Lex Pompeia regulating Bithynia. But what apparently has most weight with Mommsen is that the law is clearly a *lex secutoria*, necessitated, that is to say, by a previous law, the Lex Roscia. In the same way, the Lex Tarentina, certainly a *lex data*, was necessitated by the Lex Julia of 90 B.C. It seems to me that the inference from this parallel is not very cogent, and that the parallel itself is only partial. The sort of *lex secutoria* corresponding to the Lex Tarentina, and necessitated in Gallia Cisalpina by the Lex Roscia would be a charter, *lex data*, for this or that particular town, like what, in Mommsen's view, the

Lex Julia Municipalis (see below) was for Padua. The so-called Lex Rubria was no doubt a *lex secutoria*, but analogous in my opinion not to the Lex Tarentina but to Caesar's municipal law of 45 B.C., which was a consequence, late indeed but necessary, of the Lex Julia of 90. No doubt Caesar's two laws had different objects. One dealt with municipal arrangements generally, the other with municipal jurisdiction. But they were both general laws, not limited to particular communities, and they were both consequences of enfranchisement laws. This last point distinguishes the Gallic law from an ordinary *lex provinciae* and makes Mommsen's citation of the Bithynian law of Pompey irrelevant. I do not believe that the highly technical and delicate relations between imperial and municipal jurisdiction would have been entrusted to an individual framer of a *lex data*. It would surely have been far more natural to adopt the course undoubtedly taken in the case of the municipal law, of having the law passed with all due formalities in the Roman *comitia*. It is on these grounds that I have declined to follow Mommsen's suggestion, and have therefore retained 'Lex Rubria' as the title of the law.

With regard to Caesar's municipal law, there is at least no doubt about its being a *lex rogata*. But Mommsen has reopened the question as to its title and as to its character. As to the former, Savigny's view has been hitherto generally accepted that the title is established from the inscription of Padua, in which a Junius Sabinus is described as *iiii vir aediliciae potestatis e lege Julia municipali*. Mommsen now argues that the law mentioned in the inscription was probably a local *lex data*, framed by Caesar for Patavium. If we accept this view, the law which we have hitherto known as the Lex Julia Municipalis, will have to go without a name in future.

But I am far from convinced that Mommsen is right. It does not follow, because the term *lex municipalis* is often generically used for *leges datae*, that therefore this law, officially and specifically entitled 'Lex Julia Municipalis', must be a special *lex data* and not a general *lex rogata*. Mommsen declares that the term *lex municipalis* is *a publicis populi Romani legibus plane alienum*. It seems enough to reply that, if Caesar passed

a law dealing with municipal affairs and municipal constitutions generally, its official title must obviously and inevitably have been 'Lex Julia Municipalis'. On the other hand, I will go so far as to say that 'Lex Julia Municipalis' could not possibly have been the official title of a local *lex data*, because *ex hypothesi* a local *lex data* refers to a particular *municipium*, and this title leaves the particular *municipium* out. Pompey's law was not *Lex Pompeia provincialis*, but *Lex Pompeia de Bithynia provincia*. The Lex Rubria, a *lex data* in Mommsen's view, was not *Lex Rubria provincialis* or *judiciaria*, but *de Gallia Cisalpina*. I do not see how the conclusion can be avoided that a *lex data* for Padua must have been not *Lex Julia Municipalis*, but *Lex Julia de municipio Patavino*. I pass over the improbability that Caesar between 49 B.C. and his death would have undertaken the task of himself framing a charter for this particular town, and, taking my stand on the considerations put forward above, I still regard the inscription from Padua as fixing the title of Caesar's law.

But if it does that, it does more, and contributes an argument against Mommsen's second change of view, embodied in his assertion, 'legem populi Romani nego ullam exstitisse, quae statum municipiorum et coloniarum, sive civium Romanorum sive Latinorum, generaliter ordinaret.' Undoubtedly the fact that fragments of Caesar's law, which have come down to us, are probably only a small fraction of the whole law makes the question a difficult one to decide with certainty. The extant fragments do not of course indicate a general form of constitution, and, though they imply that there was such a form, it may have been pre-existent to, and not laid down by the law. Still, the law, as Mommsen himself admits, contains 'multa capita pertinentia ad municipiorum ordinationem'. It gives general grounds of disqualification for election to magistracies and membership in the senate. It gives general directions for the taking of the census in Italy. It empowers the framers of *leges datae* for particular *municipia* to incorporate additions and corrections, presumably based on the law, within a certain date. To this, I think we may add, that the magistrates at Padua were elected in accordance with this law. All this seems to me to

suggest, though it does not prove, that the lost portions did lay down a general form of constitution.

Mommsen argues that if there had been a general law, the jurists must have referred to it, and yet there is an 'altum silentium' about any such law. Mommsen's development of this point leaves me, I confess, unconvinced. The term *lex municipalis* admits of two meanings. It may mean a law regulating a *municipium*, and it no doubt is often used by the jurists in this sense. But it may mean a law regulating *municipia*. Mommsen somewhat arbitrarily ignores this meaning, but in at any rate two out of the three passages cited by him I believe that the term more naturally bears the latter and not the former sense, while the heading of the commentary of Paulus and the title in the Digest, 'ad Municipalem,' would naturally include both. When Ulpian (*Dig.* 50, 9, 3) says: 'lege autem municipali cavetur ut ordo non aliter habeatur quam duabus partibus adhibitis,' he is citing a general rule for all *municipia*. The fact that the provision is actually found in extant *leges datae* does not prove that Ulpian was referring to these, but only that these *leges* conformed to the general rule. When again the same jurist (50, 3, 1) says that the *album* of senators is to be drawn up *ut lex municipalis praecipit*, and *si lex cessat*, that certain rules laid down by him are to be observed, it seems obvious that his rules, being of a general character, must be filling gaps in a law which was also general.

But even if we admit the 'altum silentium', we have not disproved the existence of a general law. Indeed the fact of a general law is incontrovertibly established by the inscription. The only question is how comprehensive that general law was. That it was a law of primary importance, the extant fragments are sufficient to show, and complete silence about it in the jurists would be practically as hard to explain as if it were the comprehensive law, which Savigny asserts and Mommsen denies it to have been.

Mommsen's later view fails, as far as I can see, to suggest any reason why Caesar should have passed this law at all. His own account of the way in which the consequences necessitated by the Lex Julia of 90 B.C. were carried into effect is the

following: 'Mihi semper visum est Romanos in constituendis oppidis suae nationis linguaeque secutos esse formam communem, diversam eatenus, quatenus differt colonia a municipio itemque quatenus differunt jus civium et Latinum, praeterea per tempora ampliatam et immutatam, sed ut fundamentum maneret. Ita leges matres saepe fortasse sese continuerunt in oppidi forma denominanda, utrum colonia foret an municipium, . . . reliqua determinasse videntur deductores coloniarum et municipiorum constitutores suo arbitrio usi formis illis, et ita effectum esse leges oppidis datae in communi fundamento passim differant.' I believe that this is a perfectly correct description of the course pursued between 90 and 45 B.C. In all probability, too, the relations between the local jurisdiction of the newly enfranchised communities and the supreme jurisdiction of the praetor in Rome had been gradually fixed by a similar informal process. With a government like that existing in Rome during those years we are not surprised that things were allowed to go on in this somewhat haphazard way. But Caesar may well have considered that greater precision in both directions was desirable. Accordingly he took steps, in the very year in which Gallia Cisalpina was enfranchised, to have the judicial relations fixed by a general law, while I for one continue to believe that the Lex Julia Municipalis was intended to give greater, though perhaps not absolute, fixity and precision to municipal arrangements and municipal constitutions both north and south of the Po.

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